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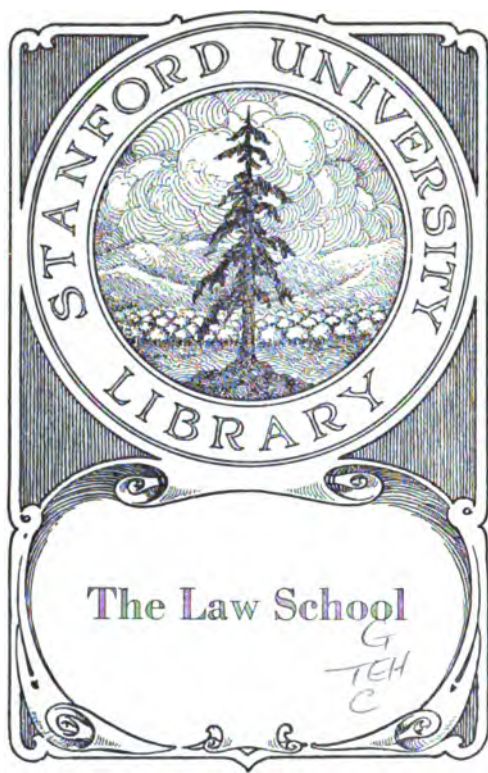
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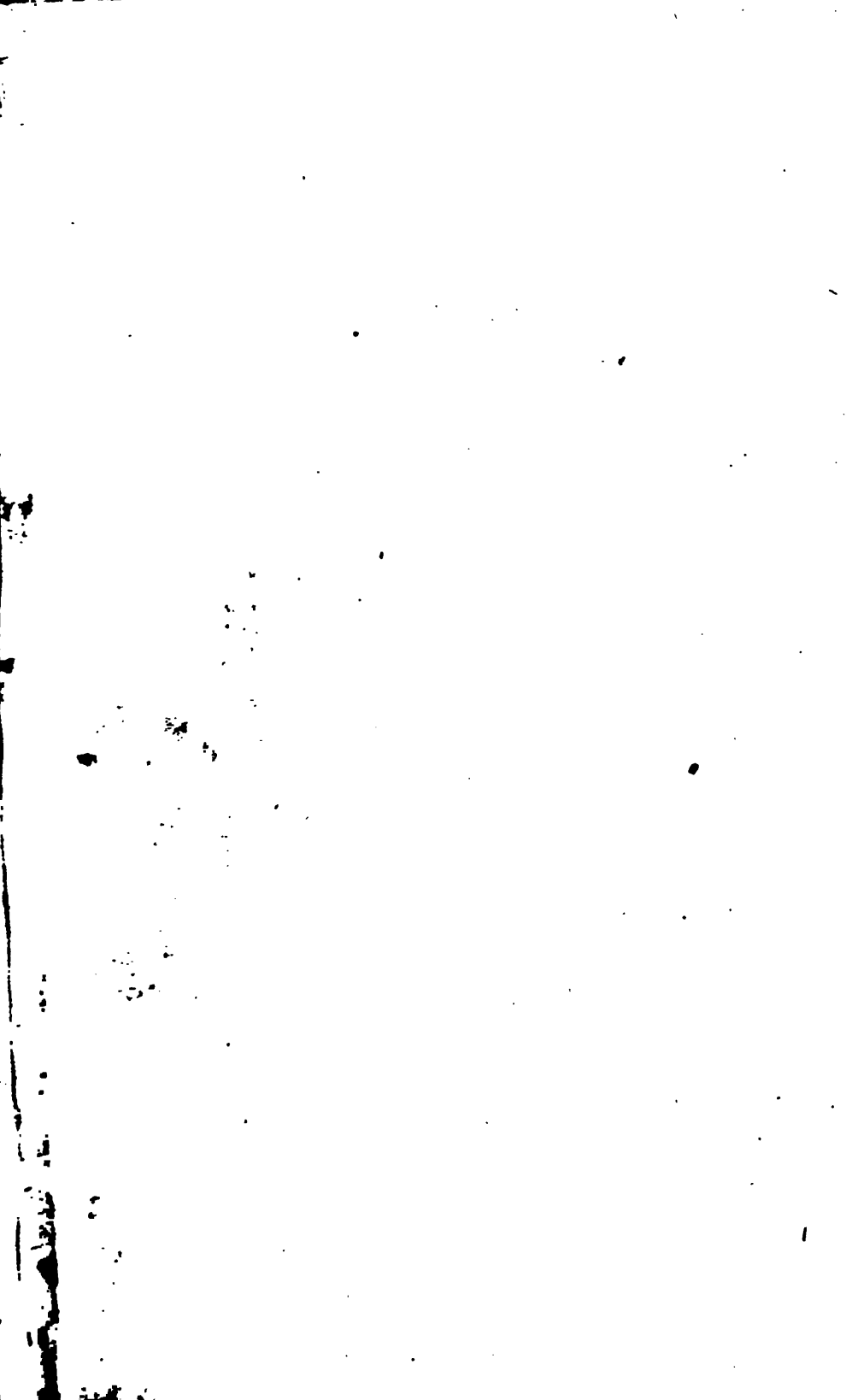
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GENERAL LAWS,
MEMORIALS AND RESOLUTIONS
OF THE
TERRITORY OF WYOMING,
PASSED AT THE FIRST SESSION
OF THE
LEGISLATIVE ASSEMBLY,

CONVENED AT
Cheyenne, October 12th, 1869,

AND ADJOURNED SINE DIE, DECEMBER 11TH, 1869,
TO WHICH ARE PREFIXED

DECLARATION OF INDEPENDENCE, CONSTITUTION
OF THE UNITED STATES, AND THE ACT
ORGANIZING THE TERRITORY,

TOGETHER WITH
EXECUTIVE PROCLAMATIONS.

PUBLISHED BY AUTHORITY.

STAPLETON

CHEYENNE, W. T.
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1870.

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TERRITORIAL OFFICERS.

Governor—JOHN A. CAMPBELL.

Secretary—EDWARD M. LEE.

United States Attorney—JOSEPH M. CAREY.

Collector of Internal Revenue—THOMAS HARLAN.

Assessor of Internal Revenue—EDGAR P. SNOW.

Chief Justice—JOHN H. HOWE.

Associate Justices—Wm. T. JONES.

JOHN W. KINGMAN.

Surveyor General—SILAS REED.

Register of Land Office—CHARLES C. CROWE.

Receiver of Public Moneys—FRANK WALCOTT.

Delegate to Congress—STEPHEN F. NUCKOLLA.

Treasurer—JOHN W. DONNELLAN.

Anditor—BENJAMIN GALLAGHER.

Commissioners of Penitentiary—FRANK B. EDMONDS.

J. H. HAYFORD.

EDWARD IVINSON.

Marshal—CHURCH HOWE.

PREFACE.

The Organic Act of Wyoming was approved July 25th, 1868. The first Governor and Secretary were appointed and qualified April 15th, 1869, and on the 19th of May the Judicial officers reported for duty, and the territorial organization was complete.

A census was ordered to be taken, and an election directed to be held for the first legislative assembly, the result of whose labors are given in this volume. Among other acts, a law was passed enfranchizing women; thus, by a single step, placing the youngest territory on earth in the vanguard of civilization and progress. Wyoming is rectangular in form, and extends from the twenty-seventh to the thirty-fourth meridian of longitude, and from the forty-first to the forty-fifth degree of longitude, embracing an area of some 97,600 square miles, or about 72,464,000 acres. The territory was formed from the southwestern portion of Dakota, together with a few square miles taken from the territories of Utah and Idaho. By the first legislative assembly it was divided into counties, running across the territory from north to south, and named as follows, commencing with the eastern boundary: Laramie, Albany, Carbon, Sweetwater and Uinta, with county seats in the same order, as follows: Cheyenne, Laramie City, Rawlins, South Pass City and Merrill. The first two of the above named counties possess unequaled grazing facilities and excellent agricultural resources. The grasses are cured upon the stalk by natural causes, for winter use, in such a manner as to retain a larger per centage of starch, gluten and other fattening properties than when cured with man's assistance. Thus, cattle and all kinds of stock can be

fattened without being housed or foddered in winter time. With these extraordinary facilities, Wyoming can successfully compete with all the world in the matter of stock growing, and upon her plains there is room and sustenance for millions of cattle and unnumbered herds of wool-bearing animals.

In the southeastern portion between the Laramie plains or table lands, and the eastern boundary south of the North Fork of Platte river, and north of the Union Pacific Rail Road, there lies one of the richest iron regions yet discovered; mountains of brown hematite iron, assaying 90 per cent. are found on the Chug water, about thirty-five miles north of Cheyenne. South of the railroad, extending into Colorado are inexhaustable supplies of red hematite that will assay from forty to sixty per cent. of metal. Carbon and Uinta Counties are also rich in iron ore of the qualities above mentioned.

This vast region of country embracing the Laramie plains and the counties aforesaid, with the surrounding hills and mountains extending from the Black hills, westward to the Wasatch mountains, is an immense field of lignite coal of excellent quality. It is estimated by geologists who have recently conducted careful investigations here, that these coal beds cover an area of 30,000 square miles, or more than one-third of the entire territory. Experiments have demonstrated that this coal is capable of smelting all kinds of iron ore. Near Rawlins on the Pacific Railroad, copper ore of unusual purity has been discovered and developed.

Sweetwater County embraces the celebrated gold region of that name, located, adjacent to the South Pass of the Rocky mountains. These mines discovered in 1867, are operated by stamp mills, twenty in number, and averaging ten stamps each. The ledges are well defined, and the quartz is of a hard vitreous nature, free from base metal. Gulch mining is also successfully prosecuted, in many instances yielding twenty-five to thirty dollars per day to each man.

In the vicinity of the Big Horn mountains and along the Black hills, gold is known to exist in large quantities. Heretofore its development has been retarded by Indian occupancy, but now movements are progressing that will result in opening up this richest gold region yet discovered.

The valleys of Big Horn, Powder and Wind rivers, with their tributaries in western and northern Wyoming, are exceedingly rich in agricultural resources. Every species of territorial game finds a home and a luxurious existence upon these comparatively unknown though grandly fertile vales. The earth yields her increase most abundantly, and fruits and vegetables attain to a wonderful degree of perfection, unaided by the hand of man.

The climate is extremely salubrious, being neither excessively hot in summer nor very cold in winter, except at brief intervals. The air is dry and rarified.

Cheyenne, 516 miles west of Omaha, is 5,931, and Laramie City 7,123 feet above tide water. The highest railroad pass in the world is in this vicinity. Churches, schools and newspapers are springing up in every direction. The people are law-abiding, enterprising and energetic, and Wyoming starts out as a separate territorial organization with unrivalled prospects. The great trans-continental railway passes through the territory from east to west, thereby affording unsurpassed facilities for transportation.

Adjacent to this road, and especially in the vicinity of Cheyenne, Laramie and Bear river, farming operations have been attended with flattering success. It is hoped that the policy by which valuable farming and mining lands in northern Wyoming are bestowed on Indians who never cultivate or develope, will be abandoned, and the savages obliged to occupy more remote and limited hunting grounds; then and not till then will the territory be wholly populated, and its inestimable resources developed and added to the national wealth.

E. M. L.

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DECLARATION OF INDEPENDENCE.

IN CONGRESS, JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF
AMERICA.

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which nature and nature's God entitle them; a decent respect to the opinions of mankind, requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly, all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves, by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbid his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained, and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the repository of their public records, for the sole purpose of fatiguing them into a compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise, the state remaining, in the mean time, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states: for that purpose obstructing the laws of naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of land.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their office; and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation.

For quartering large bodies of troops among us:

For protecting them by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes upon us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond the seas to be tried for pretended offenses:

For abolishing the free system of English laws, in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our government:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun with circumstances of cruelty and perfidy, scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrection amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms: our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world, for the rectitude of our intentions, do, in the name and by the authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other, our lives, our fortunes, and our sacred honor.

Constitution of the United States.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, to ordain and establish this constitution for the United States of America.

ARTICLE I.

SECTION I.

1. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION II.

1. The house of representatives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence

Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

SECTION III.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignations or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a senator who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of the state for which he shall be chosen.

4. The vice-president of the United States shall be president of the senate; but shall have no vote unless they be equally divided.

5. The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice president, or when he shall exercise the office of president of the United States.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment, in cases of impeachment, shall not extend further than removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law.

SECTION IV.

1. The times, places and manner of holding elections for senators and representatives shall be prescribed in each state, by the legislature thereof, but the congress may at any time, by law, make or alter such regulations, except as to the place of choosing senators.

2. The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION V.

1. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with a concurrence of two-thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time, publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to other place than that in which the two houses shall be sitting.

SECTION VI.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest, during their attendance at the session of their respective houses, or in going to or returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2 No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

SECTION VII.

1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United States; if he approve, he shall sign it; but if not, he shall return it with his objections, to that house in which it shall have originated, who shall enter the objections, at large, in their journal, and proceed to

reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases, the vote of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return: in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

The congress shall have power,

1. To lay and collect taxes, duties, imposts and excises; to pay the debts, and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States:

2. To borrow money on the credit of the United States:

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post-offices and post-roads:

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

9. To constitute tribunals inferior to the supreme court. To define and punish piracy and felony committed on the high seas, and offenses against the law of nations:

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

11. To raise and support armies; but no appropriation of money to that use, shall be for a longer term than two years:

12. To provide and maintain a navy:

13. To make rules for the government and regulation of the land and naval forces:

14. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions :

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress :

16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may by cession of particular states, and the acceptance of congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings : and

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION IX.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for such person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

3. No bill of attainder or ex post facto law shall be passed.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another ; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law ; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

7. No title of nobility shall be granted by the United States, and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept any present, emolument, office or title, of any kind whatever, from any king, prince, or foreign state.

SECTION X.

1. No state shall enter into any treaty, alliance or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit ;

make anything but gold or silver coin a tender in payment of debts ; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

2 No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws ; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and together with the vice-president, chosen for the same term, be elected as follows :

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators, and representatives, to which the state may be entitled in the congress, but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3 [Annulled. See Amendments, Art. 12.]

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes ; which day shall be the same throughout the United States.

5. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president ; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president ; and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president, delaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

7. The president shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected ; and he shall not receive, within that period, any other emolument from the United States, or any of them.

8. Before he enters on the execution of his office, he shall take the following oath or affirmation ;

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."

SECTION II.

1. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.

3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.

SECTION III.

1. He shall, from time to time, give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors, and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECTION IV.

1. The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION I.

The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time,

ordain and establish. The judges, both of the supreme and^d inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SECTION II.

1. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, or other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects.*

2. In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the congress shall make.

3. The trial of law crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECTION III.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECTION I.

1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other State. And the congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION II.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

* Restriction by Article 11 of Amendments.

2. A person charged in any state with treason, felony, or other crime, who shall flee from the justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime.

3. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION III.

1. New states may be admitted by the congress into the union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

2. The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION IV.

1. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion, and, on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

1. The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner effect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

1. All debts contracted, and engagements entered into, before the

adoption of this constitution, shall be as valid against the United States, under this constitution, as under the confederation.

2. This constitution, and the laws of the United States, which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,

President and Deputy from Virginia.

New Hampshire.

JOHN LANGDON,
NICHOLAS GILMAN.

Massachusetts.

NATHANIEL GORMAN,
RUFUS KING.

Connecticut.

WM. SAMUEL JOHNSON,
ROGER SHERMAN.

New York.

ALEXANDER HAMILTON.

New Jersey.

WILLIAM LIVINGSTON,
WILLIAM PATTERSON,
DAVID BREARLEY,
JONATHAN DAYTON,

Delaware.

GEORGE REED,
GUNNING BEDFORD, JR.,
JOHN DICKINSON,
RICHARD BASSETT,
JACOB BROOM.

Maryland.

JAMES M'HENRY,
DAN'L OF ST. THO. JENIFER.
DANIEL CARROLL.

Virginia.

JOHN BLAIR,
JAMES MADISON, Jr.

Pennsylvania.

BENJAMIN FRANKLIN,
THOMAS MIFFLIN.
ROBERT MORRIS,
GEORGE CLYMER,
THOMAS FITZSIMMONS,
JARED INGERSOLL,
JAMES WILSON.
GOUVERNEUR MORRIS.

North Carolina.

WILLIAM BLOUNT,
RICH. DOBBS SPAIGHT,
HUGH WILLIAMSON:

Attest.

South Carolina.

JOHN RUTLEDGE,
CHARLES C. PINCKNEY,
CHARLES PINCKNEY,
PIERCE BUTLER.

Georgia.

WILLIAM FEW.
ABRAHAM BALDWIN.

WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

ARTICLE II.

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in a time of war but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor

be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy a right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX. .

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

ARTICLE XII.

1. The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state as themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of

the number of votes for each; which lists they shall sign and certify, and transmit, sealed, to the seat of government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president: a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

ARTICLE XIII.

If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of congress, accept or retain any present, pension, office, or emolument of any kind whatever, from any emperor, king, prince, or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

ARTICLE XIV.

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

ORGANIC ACT.

AN ACT To Provide a Temporary Government for the Territory of Wyoming.

(Approved, July 25, 1868.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the United States described as follows: Commencing at the intersection of the twenty-seventh meridian of longitude west from Washington with the forty-fifth degree of north latitude, and running thence west to the thirty-fourth meridian of west longitude, thence south to the forty-first degree of north latitude, thence east to the twenty-seventh meridian of west longitude, and thence north to the place of beginning, be, and the same is hereby, organized into a temporary government by the name of the territory of Wyoming; *Provided,* That nothing in this act shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians: *Provided further,* That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory into two or more territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion thereof to any other territory or state.

SECTION 2. *And be it further enacted,* That the executive power and authority in and over said territory of Wyoming shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States with the advice and consent of the Senate. The governor shall reside within said Territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs, and shall approve all laws passed by the legislative assembly before they shall take effect, unless the same shall pass by a two thirds vote as provided in section six of this act; he may grant pardons for offenses against the laws of said territory, and reprieves for offenses against the laws of the United States, until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.

SEC. 3. *And be it further enacted*, That there shall be a secretary of said territory, who shall reside therein and hold his office for four years, unless sooner removed by the President of the United States, with the consent of the Senate; he shall record and preserve all the laws and the proceedings of the legislative assembly hereinafter constituted, and all acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and one copy of the executive proceedings on or before the first day of December in each year to the President of the United States, and, at the same time, two copies of the laws to the Speaker of the House of Representatives and the President of the Senate for the use of Congress; and in case of the death, removal, resignation, or other necessary absence of the governor from the territory, the secretary shall have, and he is hereby authorized and required to execute and perform, all the powers and duties of the governor during such vacancy or absence, or until another governor shall be appointed to fill such vacancy.

SEC. 4. *And be it further enacted*, That the legislative power and authority of said territory shall be vested in the governor and legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of nine members, which may be increased to thirteen, having the qualification of voters as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall consist of thirteen members, which may be increased to twenty-seven, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. An apportionment shall be made by the governor as nearly equal as practicable among the several counties or districts for the election of the council and house of representatives, giving to each section of the Territory representation in the ratio of their population, (excepting Indians not taxed,) as nearly as may be, and the members of the council and house of representatives shall reside in and be inhabitants of the districts for which they may be elected, respectively. Previous to the first election the governor shall cause a census or enumeration of the inhabitants of the several counties or districts of the territory to be taken, and the first election shall be held at such times and places, and be conducted in such manner as the governor shall appoint and direct, and he shall at the same time declare the number of the members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The number of persons authorized to be elected, having the highest number of votes in each of said council districts for members of the council, shall be declared by the governor duly elected to the council; and the person or persons authorized to be elected having the greatest number of votes for the house of representatives equal to the number to which each county or district shall be entitled, shall be declared by the governor to be elected members of the house of representatives: *Provided*, That in case of a tie between two or more persons voted for, the governor shall order a new election, to supply the vacancy made by such tie vote. And the persons thus elected to the legislative assembly shall

meet at such place and on such day as the governor shall appoint ; but thereafter the time, place, and manner of holding and conducting elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the population, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly : *Provided*, That no one session shall exceed the term of forty days, except the first, which may be extended to sixty days, but no longer.

SEC. 5. *And be it further enacted*, That every male citizen of the United States above the age of twenty-one years, and [including] persons who shall have declared their intention to become citizens of the United States, who shall have been a resident of the said territory at the time of the passage of this act, shall be entitled to vote at the first and all subsequent elections in the territory, and shall be eligible to hold any office in said territory. And the legislative assembly shall not at any time abridge the right of suffrage, or to hold office, on account of the race, color, or previous condition of servitude of any resident of the territory : *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States, and those who shall have declared on oath before a competent court of record their intention to become such, and shall have taken an oath to support the Constitution and government of the United States.

SEC. 6. *And be it further enacted*, [That] the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act : but no law shall be passed interfering with the primary disposal of the soil : no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents, nor shall any law be passed impairing the rights of private property, nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to taxation shall be taxed in proportion to its value. Every bill which shall have passed the council and the house of representatives of said territory shall, before it becomes a law, be presented to the governor of the territory. If he approves, he shall sign it ; but if not, he shall return it with his objections to the house in which it originated, who shall enter the objections at large upon their journal and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections to the other house, by which it shall likewise be reconsidered ; and if approved by two-thirds of that house it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journal of each house respectively. If any bill shall not be returned by the governor within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return, in which case it shall not be a law.

SEC. 7. *And be it further enacted*, That all township, district, and

county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the governor and legislative assembly of the Territory. The governor shall nominate and by and with the consent of the council appoint all officers not herein otherwise provided for, and in the first instance the governor alone may appoint all such officers, who shall hold their office until the end of the first session of the legislative assembly; and he shall lay off the necessary districts for members of the council and house of representatives, and all other officers.

SEC. 8. *And be it further enacted*, That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased while he was a member, during the term for which he was elected, and for one year after the expiration of such term; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

SEC. 9. *And be it further enacted*, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices for four years, unless sooner removed by the President with the consent of the Senate of the United States. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such time and place as may be prescribed by law; and said judges shall after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts, and of the justices of the peace, shall be as limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction and authority for redress of all wrongs committed against the Constitution or laws of the United States or of the territory affecting persons or property. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office where the court may be held. Writs of error, bills of exception, and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court under such regulations as may be prescribed by law, but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerks, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeal from the final decision of said supreme court shall be allowed and

may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the Constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the said supreme and district courts of said territory; and the respective judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are grantable by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said Constitution and laws; and writs of error and appeals in all such cases shall be made to the supreme court of said territory, the same as in other cases. The said clerk shall receive in all such cases the same fees which the clerks of the district courts of Dakota territory now receive for similar services.

SEC. 10. *And be it further enacted,* That there shall be appointed an attorney for said territory, who shall continue in office for four years, unless sooner removed by the president with the consent of the Senate, and who shall receive the same fees and salary as is now received by the attorney of the United States for the territory of *Dacotah* [Dakota.] There shall also be a marshal for the Territory appointed, who shall hold his office for four years, unless sooner removed by the president with the consent of the Senate, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States: he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as the marshal of the district court of the United States for the present territory of Dakota, and shall, in addition, be paid two hundred dollars annually as compensation for extra services.

SEC. 11. *And be it further enacted,* That the governor, secretary, chief justice and associate justices, attorney, and marshal, shall be nominated, and, by and with the advice and consent of the senate, appointed by the President of the United States. The governor and secretary to be appointed as aforesaid shall, before they act as such, respectively, take an oath or affirmation before the district judge, or some justice of the peace in the limits of said territory duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice, or some associate justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oaths when so taken shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the secretary among the executive proceedings, and the chief justice, and associate justices, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some

judge or justice of the peace of the territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary to be recorded by him as aforesaid, and afterwards the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The governor shall receive an annual salary of two thousand dollars as governor, and one thousand dollars as superintendent of Indian affairs; the chief justice and the associate justices shall each receive an annual salary of twenty-five hundred dollars, and the secretary shall receive an annual salary of eighteen hundred dollars. The said salaries shall be payable quarter-yearly at the treasury of the United States. The members of the legislative assembly shall be entitled to receive four dollars each per day during their attendance at the session thereof, and three dollars for every twenty miles' travel in going to and returning from the said sessions, estimating the distance by the nearest travelled route. There shall be appropriated annually the sum of one thousand dollars, to be expended by the governor, to defray the contingent expenses of the territory. There shall also be appropriated annually a sufficient sum, to be expended by the secretary, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the secretary of the territory shall annually account to the Secretary of the Treasury of the United States for the manner in which the aforesaid sum shall have been expended.

SEC. 12. *And be it further enacted*, That the legislative assembly of the Territory of Wyoming shall hold its first session at such time and place in said Territory as the governor thereof shall appoint and direct: and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for said Territory at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by the said governor and legislative assembly.

SEC. 13. *And be it further enacted*, That a delegate to the House of Representatives of the United States, to serve during each Congress of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States in the said House of Representatives. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections the time, place, and manner of holding elections shall be prescribed by law. The person having the greatest number of votes of the qualified electors as hereintofore provided, shall be declared by the governor elected, and a certificate thereof shall be accordingly given.

SEC. 14. *And be it further enacted*, That sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to public schools in the state or states hereafter to be erected out of the same.

SEC. 15. *And be it further enacted,* That temporarily and until otherwise provided by law the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for the said territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts and assign the judges and alter the times and places of holding the courts as to them shall seem proper and convenient.

SEC. 16. *And be it further enacted,* That the constitution and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said territory of Wyoming as elsewhere within the United States.

SEC. 17. *And be it further enacted,* That this act shall take effect from and after the time when the executive and judicial officers herein provided for shall have been duly appointed and qualified: *Provided,* That all general territorial laws of the territory of Dakota in force in any portion of said territory of Wyoming at the time this act shall take effect shall be and continue in force throughout the said territory until repealed by the legislative authority of said territory except such laws as relate to the possession or occupation of mines or mining claims.

PROCLAMATIONS.

DESCRIPTION OF GREAT SEAL OF WYOMING.

A mountain with locomotive and train of cars crossing over its summit. Near the summit a spring of water, from which flow[s] two streams, one to the east, and one to the west. In foreground at base of the mountain, a shovel and pick-ax, shepherd's crook and a plow, grouped,—all engraved on a shield running from left to right. On each side and underneath the shield, the motto "Let us have Peace." Over the mountain the figures "1868". Crest, an elk's head surmounting fasces. The whole surrounded by a double circle, with the words "Wyoming Territory," "Great Seal."

Ordered that the above be the Great Seal of Wyoming Territory, until another is adopted by the legislature.

PROCLAMATION.

By J. A. Campbell, Governor of the Territory of Wyoming.

TO THE PEOPLE OF WYOMING:

By virtue of authority vested in me as governor of the territory of Wyoming, the following judicial districts are defined, judges assigned, and times and places of holding courts designated.

The county of Laramie will compose the first judicial district, in which district the first term of court will be held at Cheyenne, on Tuesday, the twenty-fifth day of May, 1869, chief justice J. H. Howe presiding.

The counties of Albany and Carbon will compose the second judicial district, the first term of court in which district will be held at Laramie, Albany county, on Tuesday, the 13th day of June, 1869, Associate Justice W. T. Jones presiding.

The county of Carter will compose the third judicial district, the first term of court in which district will be held at South Pass City, on Tuesday, the twenty-second day of June, 1869, Associate Justice John W. Kingman presiding.

PROCLAMATIONS.

Done at the city of Cheyenne this nineteenth day of May.
 [L. s.] A. D. 1869, and of the independence of the United
 States of America the ninety-third.

J. A. CAMPBELL.

By the Governor:

EDWARD M. LEE,
 Secretary.

PROCLAMATION.

By J. A. Campbell, Governor of the Territory of Wyoming.

By virtue of authority vested in me as governor of the territory of Wyoming, that part of said territory which was detached from the territories of Idaho and Utah, is hereby attached for judicial purposes to the county of Carter and forms a part of the third judicial district of Wyoming.

Done at Cheyenne this ninth day of June, A. D. 1869, and
 [L. s.] of the independence of the United States of America the
 ninety-third.

J. A. CAMPBELL.

By the Governor:

EDWARD M. LEE,
 Secretary of the Territory.

PROCLAMATION.

By J. A. Campbell, Governor of the Territory of Wyoming.

TO THE PEOPLE OF WYOMING:

By virtue of authority vested in me as governor of the territory of Wyoming, I hereby declare and announce that a term of the district court of the first judicial district of Wyoming will be held at Cheyenne on Tuesday, the seventh day of September 1869.

In testimony whereof, I have hereunto set my hand, and caused the great seal of the territory to be affixed.

Done at the city of Cheyenne, this twenty-second day of
 [L. s.] July, in the year of our Lord, eighteen hundred and sixty-
 nine, and of the independence of the United States of
 America, the ninety-fourth.

J. A. CAMPBELL.

By the Governor:

EDWARD M. LEE,
 Secretary.

PROCLAMATION.

By J. A. Campbell, Governor of the Territory of Wyoming.

TO THE PEOPLE OF WYOMING :

In compliance with the provisions of the act organizing the territory of Wyoming, an election will be held in said territory on Thursday, the 2nd day of September, A. D. 1869, for the election of a Delegate to the house of representatives of the forty-first Congress, and for nine members of the council and thirteen members of the house of representatives of the first territorial legislature.

The following election districts are established :

FOR DELEGATE :

The whole territory of Wyoming.

COUNCIL DISTRICTS :

The county of Laramie will constitute the first council district, and will elect three members of the council.

The counties of Albany and Carbon will constitute the second council district, and will elect three members of the Council.

The county of Carter and that portion of the territory which was detached from the territories of Utah and Idaho, will constitute the third council district, and will elect three members of the council.

REPRESENTATIVE DISTRICTS :

The territory at large will elect one member of the House of Representatives.

The county of Laramie will elect four members of the House of Representatives.

The county of Albany will elect three members of the House of Representatives.

The county of Carbon will elect one member of the House of Representatives.

The county of Carter will elect three members of the House of Representatives.

That portion of Wyoming detached from the territories of Utah and Idaho, will elect one member of the House of Representatives.

The following places are designated as election precincts :

Pine Bluffs, Cheyenne, Fort Laramie, Fort Fetterman, Sherman, Laramie City, Wyoming, Perv, Cinnabar City, Rock Creek, Medicine Bow, Carbon, St. Mary, Rawlings, Fort Fred Steele, Separation, Creston, Washakie, Red Desert, Bitter Creek, South Pass City, Atlantic City, Miners' Delight, Austin's House on Big Papo Agie River, Hallsville, Point of Rocks, Rock Springs, Green River, Bryan, Granger, Church Buttes, Carter, Fort Bridger, Piedmont, Aspen.

The act of Congress organizing the territory of Wyoming, approved July 25th, A. D. 1868, provides that "Every male citizen of the United States, above the age of twenty-one years, AND [including] persons who "shall have declared their intention to become citizens of the United States, who shall have been residents of the said territory at the time of

"the passage of this act, shall be entitled to vote at the first and all subsequent elections in the territory, and shall be eligible to any office in the territory."

Three judges of election in each precinct will be appointed by the governor. The judges shall choose two persons having similar qualifications with themselves to act as clerks of the election.

The judges of election will designate the house in each precinct at which the polls will be opened, and shall give written notice thereof at least six days prior to the election.

Previous to votes being taken, the judges and the clerks of the election, shall severally take an oath in the following form, to wit: "I, A. B., do solemnly swear (or affirm as the case may be) that I will perform the duties of judge of election (or clerk, as the case may be) according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same."

In case there shall be no judge of a court or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered to administer the oath to each other and to the clerks of the election; and the person administering oaths shall cause an entry thereof to be made and subscribed by him and prefixed to the poll book.

The polls shall be opened at the hour of nine o'clock in the forenoon and continue open until four o'clock in the afternoon of the same day at which time the polls shall be closed. Thirty minutes before the closing of the polls, proclamation shall be made that the poll will be closed in half an hour, but the board may, in their discretion, adjourn the polls at twelve o'clock, noon, for one hour, (proclamation of the same being made).

Every elector shall vote by ballot, and each person offering to vote shall deliver his ballot to one of the judges of election, in presence of the board. The ballot shall be a paper ticket which shall contain written or printed, or partly written and partly printed, the names of the persons for whom the elector intends to vote, and shall designate the office to which each person so named is intended by him to be chosen; but no ballot shall contain a greater number of names of persons designated to any office than there are persons to be chosen at the election to fill such office.

The names of all persons voted for by any elector shall be on one ballot.

If any person offering to vote shall be challenged as unqualified, by any judge or clerk of election, or by any other person entitled to vote at the same poll, the board of judges shall declare to the person so challenged, the qualifications of an elector; if such person shall then state himself duly qualified, and the challenge shall not be withdrawn, one of the judges shall then tender to him the following oath: "You do solemnly swear (or affirm as the case may be,) that you are twenty-one years of age, that you are a citizen of the United States, (or that you have declared your intention to become a citizen conformably to the laws of the United States on the subject of naturalization) that you have not voted at this election;" and if any person so challenged shall refuse to take such oath so tendered, his vote shall be rejected; and after taking such oath, if the

judges have good reason to believe that the person so offering to vote is not a legal voter, before receiving his vote they shall require him to subscribe the oath which shall be written out and preserved with the poll books for future reference.

There shall be provided, and kept by the judges of each election precinct, at the expense of the county in which such precincts are situated), a suitable ballot box with lock and key. There shall be an opening through the lid of such box, of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls, the ballot box shall be carefully examined by the judges of the election, that nothing may remain therein. It shall then be locked and the keys thereof delivered to one of the judges to be designated by the board, and shall not be opened during the election, except in the manner and for the purposes hereinafter mentioned.

When a ballot shall be received, one of the judges, without opening the same, or permitting it to be opened or examined, (except to ascertain whether it be a single ballot) shall deposit it in the ballot box.

Each clerk of election shall keep a poll list which shall contain the names of all the persons voting at the election in their numerical order.

At each adjournment of the polls for dinner, the clerks shall in presence of the judges compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered according to the decision of the board, until such poll lists shall be made in all respects to correspond.

The ballot box shall then be opened and the poll list replaced therein, and said box shall then be locked, and a covering with a seal placed on the opening in the lid of such box so as to entirely cover the same, and the key delivered to one of the judges, and the box to another, to be designated by the board.

The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the polls; and the person having the box shall carefully keep it, without opening it, or suffering it to be opened, or the seal thereof to be broken or removed, and shall publicly in that condition deliver it to the board of judges at the next opening of the poll, when the seal shall be broken, the box opened, the poll lists taken out and the box again locked.

It shall be the duty of each judge of election to challenge every person offering to vote, whom he shall know or suspect not to be qualified as an elector.

For the preservation of order as well as to secure the judges and clerks from abuse, it shall be the duty of the constable or constables residing in the district or precinct to attend at the election, and should no constable attend, the judges of election are hereby authorized and empowered to appoint one or more special constables to assist in preserving order during the election.

As soon as the poll of the election shall be finally closed, the judges shall immediately proceed to canvass the vote given, and the canvass shall be public and shall be continued without adjournment until completed.

The canvass shall commence by a comparison of the poll list, from the

commencement, and a correction of any mistake that may be found therein until they shall be found or made to agree. The box shall then be opened, and the ballots therein be taken out and counted by the judges, unopened, except so far as to ascertain whether each ballot is single, and if two or more ballots shall be found folded together, as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot shall be completed, and if upon a comparison of the count with the poll lists and the appearance of such ballots a majority of such judges shall be of opinion that the ballots thus folded together were voted by one elector, they shall be destroyed.

If the ballots in the box be found to exceed in number the whole number of votes on the poll lists, they shall be replaced in the box, after being purged as above, and one of the judges shall publicly draw out and destroy therefrom as many ballots, unopened, as shall be equal to such excess. The ballot and poll list agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll books the name of every person voted for written at full length, the office for which such person received such votes, and the number he did receive, the number being expressed at full length, such entry to be made as nearly as circumstances will admit, in the following form, to-wit: "At an election held at the house of A. B., in the district or precinct of ———, in the county of ———, and territory of Wyoming, on the second day of September, A. D., 1869, the following named persons received the number of votes attached to their respective names for the following offices, to-wit: A. B. had ——— votes for Delegate to Congress; C. D. had ——— votes for Member of the Legislative Council; E. F. had ——— votes for Member of the House of Representatives." The judges of election shall then inclose and seal one of the poll books, and under cover, direct to the secretary of the territory, at his office in the city of Cheyenne, and the packet thus sealed shall be conveyed by one of the judges or clerks of the election, to be determined by lot if they cannot agree, or by some other person to be agreed upon by the judges, and delivered to the secretary aforesaid, with the seals unbroken, at his office six days after the closing of the polls, and the other poll book, together with the ballot box, shall be deposited with one of the judges of the election, to be determined by lot if not otherwise agreed; and the said poll book shall be subject to the inspection of any elector at any time hereafter who may wish to examine the same.

The secretary shall retain and preserve the packets aforesaid under seal, and as soon as all the returns are by him received, he shall, after having notified the governor and chief justice, open the packets in their presence, when the governor, chief justice and secretary, will proceed to canvass the votes, and the Governor will issue certificates of election to such persons as shall have been duly elected to the offices herein specified.

During the day on which said election shall be held, no civil process shall be served on any elector entitled to vote at the election.

In testimony whereof I have hereunto set my hand and caused the great seal of the territory to be hereunto affixed.

[L. S.] Done at the city of Cheyenne this third day of August, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States of America the ninety-fourth.

J. A. CAMPBELL.

By the Governor :

EDWARD M. LEE,

Secretary of the Territory.

PROCLAMATION,

By J. A. Campbell, Governor of the Territory of Wyoming.

TO THE PEOPLE OF WYOMING:

WHEREAS, By my proclamation of the third day of August, eighteen hundred and sixty-nine, in virtue of the power vested in me as governor of the territory of Wyoming, an election was ordered to be held in said territory at a certain time and in certain places, and under regulations therein prescribed, and

WHEREAS, It has come to my knowledge that certain modifications are advisable in said proclamation; Now, therefore, be it known that I, J. A. Campbell, by virtue of authority vested in me as Governor of the territory of Wyoming, do hereby proclaim and declare the following changes and additions to my said proclamation :

Evanston and Carling's Camp are designated and declared to be election precincts. Pine Bluffs is discontinued as an election precinct.

If any person appointed to act as judge of the election aforesaid, shall neglect or refuse to be sworn to act in such capacity, or shall not be present, the place of such person shall be filled by the votes of such qualified electors residing within the county or precinct as may then be present at the place of election, and the person or persons so elected to fill the vacancy or vacancies, shall be and are hereby vested with the same power as if appointed by the executive of this territory.

In testimony whereof, I have hereunto set my hand and caused the great seal of the Territory to be hereunto affixed.

[L. S.] Done at the city of Cheyenne this twentieth day of August, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States of America the ninety-fourth.

J. A. CAMPBELL.

By the Governor :

EDWARD M. LEE,

Secretary of the Territory.

PROCLAMATIONS.

PROCLAMATION.

By Edward M Lee, Secretary, and Acting Governor of the Territory of Wyoming.

TO THE PEOPLE OF WYOMING:

By virtue of authority vested in me as secretary and acting governor of the territory of Wyoming, I hereby declare and announce that a term of the district court of the second judicial district of Wyoming, will be held at Laramie city, in said territory, on Tuesday the 12th day of October, A. D. 1869.

In testimony whereof, I have hereunto set my hand and caused the great seal of the territory to be affixed.

[L. S.] Done at the city of Cheyenne, this sixth day of September, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States of America the ninety-fourth.

EDWARD M. LEE,
Secretary and Acting Governor of Wyoming.

PROCLAMATION.

By J. A. Campbell, Governor of the Territory of Wyoming.

TO THE PEOPLE OF WYOMING:

WHEREAS, Under the laws at present in force in this territory, persons convicted of certain offenses against the laws are required to be confined in the territorial prison; and

WHEREAS, No territorial prison has been provided in Wyoming;

Now, therefore, I, J. A. Campbell, governor of the territory of Wyoming, by virtue of the power vested in me, do hereby designate the Detroit House of Correction, in the city of Detroit, state of Michigan, as the territorial prison of the territory of Wyoming, to which all offenders who have been or may be convicted as aforesaid, will be conveyed and imprisoned.

In testimony whereof I have hereunto set my hand and caused the great seal of the territory to be affixed.

[L. S.] Done at the city of Cheyenne, this eleventh day of September in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States the ninety-fourth.

J. A. CAMPBELL.

By the Governor:

EDWARD M. LEE,

Secretary of the Territory.

PROCLAMATION.

By J. A. Campbell, Governor of the Territory of Wyoming.

TO THE PEOPLE OF WYOMING:

By virtue of authority vested in me as governor of the territory of Wyoming, I hereby declare and announce that a term of the District court of the third judicial district of Wyoming, will be held at South Pass City, in said territory, on Wednesday, the twenty-second day of September, 1869.

In testimony whereof, I have hereunto set my hand and caused the great seal of the Territory to be affixed.

[L. S.] Done at the city of Cheyenne, this fifteenth day of September, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the United States the ninety-fourth.

J. A. CAMPBELL.

By the Governor:

EDWARD M. LEE,

Secretary of the Territory.

PROCLAMATION.

By J. A. Campbell, Governor of the Territory of Wyoming.

TO THE PEOPLE OF WYOMING:

By virtue of the authority vested in me, I, J. A. Campbell, governor of the territory of Wyoming, hereby announce and direct that the first session of the first Legislative Assembly of the territory of Wyoming, shall be held in the city of Cheyenne, in said territory, commencing on Tuesday, the twelfth day of October, A. D. 1869.

In testimony whereof I have hereunto set my hand and caused the great seal of the territory to be affixed.

[L. S.] Done at the city of Cheyenne, this twenty-second day of September, in the year of our Lord, one thousand eight hundred and sixty-nine, and of the independence of the United States the ninety-fourth.

J. A. CAMPBELL.

By the Governor:

EDWARD M. LEE,

Secretary of the Territory.

PROCLAMATION.

By J. A. Campbell, Governor of the Territory of Wyoming.

TO THE PEOPLE OF WYOMING:

WHEREAS, The president of the United States has designated

Thursday, the eighteenth day of November, 1869, as a day of thanksgiving and praise: Now, therefore, I, J. A. Campbell, governor of the Territory of Wyoming, do recommend that on that day all secular pursuits be suspended throughout the whole extent of the territory; and that our people assemble together at their places of public worship or in the privacy of their own homes and render thanks to Almighty God, the giver of all good, for the many blessings vouchsafed to us as a people. In the year which is drawing to a close, we have been free from war, pestilence and famine. Although we are the pioneers of a future State, we are mercifully spared from the troubles and dangers which have beset the paths of former pioneers. The labor of the husbandman, the miner and the herdsman have met with their due reward, not alone in what they have reaped, but also in rich promise for the future. Life, liberty and property are secured by laws which are faithfully enforced. For all these blessings to us as a people, and for the manifold mercies which have been experienced by each of us individually, it is meet and proper that we render humble and heartfelt thanks to Him from whom all good things come.

In testimony whereof, I have hereunto set my hand and caused the great seal of the territory to be affixed.

[L. S.] Done at the city of Cheyenne, this eighteenth day of October, in the year of our Lord, one thousand eight hundred and sixty-nine, and of the independence of the United States the ninety-fourth.

J. A. CAMPBELL.

By the Governor:

EDWARD M. LEE,

Secretary of the Territory.

GENERAL LAWS
OF THE
TERRITORY OF WYOMING.

JUSTICES CODE.

CHAPTER 1.

AN ACT TO ESTABLISH THE COURTS OF AND DEFINE THE JURISDICTION OF
JUSTICES OF THE PEACE.

*Be it enacted by the Council and House of Representatives
of the Territory of Wyoming, as follows:*

TITLE I.

CIVIL PROCEDURE—JURISDICTION OF JUSTICES OF THE PEACE.

SECTION 1. The jurisdiction of justices of the peace, in all cases, shall, unless otherwise directed by law, be limited to the counties wherein they shall reside.

Jurisdiction
limited to coun-
ties where the
justice resides.

SEC. 2. Justices of the peace, within and coextensive with their respective counties, shall have jurisdiction and authority:

Extent of ju-
risdiction and au-
thority.

First, To administer an oath or affirmation authorized or required by law to be administered.

Second, To take the acknowledgment of deeds, mortgages, and other instruments of writing.

Third, To solemnize marriages.

Fourth, To issue subpoenas for witnesses and coerce their attendance in causes or matters pending before them, or other cause or matter wherein they may be required to take depositions.

Fifth, To try the action for forcible entry and detention or detention only, of real property.

Sixth, To proceed against sureties for costs and amount of bail, on the stay of execution on their dockets.

Seventh, To issue attachments, and proceed against the goods and effects of debtors in certain cases as provided by law.

Eighth, To issue executions on judgments rendered by them.

Ninth, To try the right of the claimant to property taken in execution or on attachment.

Tenth, Of an action arising on contract expressed or implied for the recovery of money only, if the sum claimed does not exceed one hundred dollars, whether the sum claimed be an original specified amount in a contract, or the balance of unadjusted accounts or claims between the parties.

Eleventh, Of an action for damages for an injury to the person, or for a trespass upon real property, or for taking, detaining, or injuring personal property, if the damages claimed do not exceed one hundred dollars.

Twelfth, Of an action for a penalty not exceeding one hundred dollars, given by the statutes.

Thirteenth, Of an action upon bonds conditioned for the payment of money where the amount claimed does not exceed one hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due.

Fourteenth, An action may be brought upon any instrument payable in installments, as each installment becomes due, when such instrument and amount shall be within a justice's jurisdiction as herein provided.

Fifteenth, To enter judgment on the confession of a defendant when the amount does not exceed one hundred dollars.

Seventeenth, In all civil actions to be brought against

[a] constable or sureties to his official undertakings, or against both, for the failure of any constable to pay over any money by him collected, to the party thereto entitled, or for any neglect of duty by such constable in his official capacity, when the sum sought to be recovered by the plaintiff in such action shall not exceed one hundred dollars.

SEC. 3. Justices of the peace shall not have cognizance of any action :

Actions to which jurisdiction does not extend.

First, To recover damages for an assault, or assault and battery where the damages exceed one hundred dollars.

Second, In actions for malicious prosecution.

Third, In actions against justices of the peace or other officers for misconduct in office, except in cases provided in this act or by other statutes.

Fourth, In actions for slander.

Fifth, In actions on contract pertaining to real estate, except leases and those contracts coming within the forcible detainer act.

Sixth, In actions for false imprisonment.

Seventh, In actions for libel, or criminal conversation, or seduction, or upon a promise to marry.

Eighth, Nor in actions in which the title to real estate is sought to be recovered, or may properly be drawn in question.

SEC. 4. Every justice of the peace shall keep his office in the precinct for which he may be elected or appointed, and not elsewhere, but he may issue process in any place in the county.

Shall keep office in precinct where appointed. May issue process throughout the county.

SEC. 5. No justice of the peace shall hold his office in the same room with a practicing attorney, unless such attorney shall be his law partner; and in that case, such partner shall not be permitted to appear or practice as an attorney, in any case tried before such justice.

Shall not hold office with attorney, &c.

SEC. 6. Every justice of the peace in this territory, after qualifying, is hereby authorized to hold his court for the trial of all actions of which jurisdiction is given him by law, and to hear, try, and determine the same according to law; and for that purpose, when no special provision is otherwise made by law, such court shall be vested with all the necessary

Miscellaneous provisions.

powers which are possessed by courts of record in this territory; and all laws of a general nature are to apply to such justice's court, so far as the same may be applicable, and not inconsistent with the provisions of this act.

TITLE II.

1. *Docket entries.* 2. *Commencement of suits.* 3. *Service and return of process.*

Docket, what
to contain.

SEC. 7. Every justice of the peace shall keep a docket in which he shall enter :

First, The title of all causes commenced before him.

Second, The time when the process was issued against the defendant and the particular nature thereof, and to what officer delivered.

Third, The time when the parties appeared before him, either without or upon the return of process.

Fourth, A brief statement of the nature of the plaintiff's demand, and the amount claimed, and if any set-off was pleaded, a similar statement of the set-off and the amount claimed.

Fifth, Every adjournment stating at whose request, and for what time.

Sixth, The time when the trial was had, stating whether the same was by the jury or by the justice.

Seventh, The verdict of the jury, and when rendered and the judgment thereon.

Eighth, The judgment of the court.

Ninth, The time of issuing execution, and the name of the officer to whom delivered.

Tenth, The fact of an appeal having been taken and allowed, and when taken and allowed.

Eleventh, Satisfaction of judgement and when made.

Twelfth, And such other entries as may be material, showing the proceedings before the justice.

Actions, how
and when com-
menced.

SEC. 8. Civil actions before justices of the peace are commenced by summons, or by the appearance and agreement of the parties without summons. In the former,

the action is deemed commenced upon delivery of the writ to the constable to be served, and he shall note thereon the time of receiving the same. In the latter case, the action is deemed commenced at the time of docketing the case on the appearance of the parties.

SEC. 9. All persons over fourteen years of age, and under twenty-one, when subject to no disability other than being a minor, may sue or be sued, and when plaintiff shall sue by a next friend, to be nominated by him and appointed by the court before suit shall be commenced, and such next friend shall be liable for the cost chargeable to the plaintiff. When such minor shall be sued, he shall appear by guardian, to be nominated by him and appointed by the court, before any proceedings shall be had in the case; but judgment shall be rendered against the minor defendant only. In either case, if plaintiff or defendant neglect or refuse to nominate a next friend or guardian, the court shall appoint some discreet person to be such next friend or guardian, who, in any case, shall consent in writing, which consent shall be filed with the justice.

Persons subject
to jurisdiction.
Minors. Guard-
ians.

SEC. 10. The style of the summons shall be, "Territory of Wyoming, County;" it shall be dated the day it is issued, signed by the justice issuing the same, directed to the constable or sheriff of the proper county; it must contain the name of the defendant or defendants, if known; if unknown, a fictitious name to be used, and command the officer serving the same to summon the defendant or defendants to appear before such justice, at his office, in county, at a time specified therein, and must describe the plaintiff's cause of action in such general terms as to apprise the defendant of the nature of the claim against him; and there shall be indorsed on the writ, the amount for which the plaintiff will take judgment, if the defendant fail to appear. Judgment shall not be rendered for a larger amount and costs than is claimed, nor for such amount without proof of the correctness of the plaintiff's demand.

Summons.
What to con-
tain.
Judgment not
larger than
amount claimed.

Summons how
returnable.
Must be served
three days before
appearance.

SEC. 11. The summons must be returnable not more than twelve days from its date, and must be served at least three days before the time of appearance, as follows :

1. By delivering a copy of the summons with the indorsement thereon, (certified by the constable or person serving the same to be a true copy,) to the defendant, or leaving the same at his usual place of residence or business, with some person over ten years of age, residing or staying thereat, to whom the contents shall be explained.

2. An acknowledgment on the back of the summons, or the voluntary appearance of a defendant, is equivalent to service.

Summons
against corporation
how served.

SEC. 12. A summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer ; or if none of these shall be found in the county, upon the cashier, treasurer, secretary, clerk or agent ; or if none of the aforesaid officers can be found, by a copy left at an office or usual place of business of such corporation, with the person having charge thereof.

How served on
insurance com-
panies.

SEC. 13. When the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency, and when the defendant is a foreign corporation, having an agent in this territory, the service may be upon such agent.

How served up-
on minors.

SEC. 14. When the defendant is a minor more than fourteen years of age, service upon him alone shall be sufficient, the manner of service may be the same as in the case of adults.

Service by per-
sons not an officer

SEC. 15. Every justice issuing any process authorized by this act, upon being satisfied that such process will not be executed for want of an officer to be had in time to execute the same, may empower any suitable person not being a party to the suit to execute the same by an indorsement on the process to the following effect. "At the request and risk of the plaintiff, I authorize A. B. to execute and return this

writ. E. F. justice of the peace." And the person so empowered shall thereupon possess all the authority of a constable in relation to the execution of such process, and shall be subject to the same obligation, and shall receive the same fees for his services.

SEC. 16. Where an action is against two or more defendants, and one or more shall have been served but not all of them, the plaintiff may proceed as follows : Joint defendants, how proceeded against.

First, If the action be against defendants jointly indebted upon contract, he may proceed against the defendants served unless the justice otherwise direct, and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all, and the separate property of the defendants served ; and if they are subject to arrest, against the persons of the defendants served.

Second, If the action be against defendants severally liable, he may without prejudice to his rights against these not served, proceed against the defendants served in the same manner as if they were the only defendants. Nothing in this act shall be so construed as to make a judgment against one or more defendants jointly or severally liable a bar to another action against those not served.

TITLE III.

Appearance and Pleadings.

SEC. 17. The parties are entitled to one hour in which to appear after the time mentioned in the summons for appearance, but are not bound to remain longer than that time, unless both parties have appeared, and the justice being present, engaged in the trial of another cause. In such case the justice may postpone the time of appearance until the close of such trial. One hour in which to appear

SEC. 18. Pleadings in justice's court may be oral or in writing at the election of parties; if oral, the substance of them must be entered by the justice in his docket, if in writing, they must be filed in his office and reference to Pleadings oral or in writing.

them made in his docket; if a written instrument be the ground of action or defense, it shall be filed as a part of the pleadings, if they are oral. If the action or defense shall be a matter of account, a bill of items shall be filed at the time of joining issue, and no evidence shall be allowed of other items of account than those filed, unless leave to amend shall be granted, which amendments may be allowed by the court in furtherance of justice, unless such amendment shall introduce such new matter as shall in the opinion of the court work a surprise to the opposite party, in which case such amendment shall not be allowed unless the party asking to amend shall consent to an adjournment, and pay the cost incident thereto. To prove the surprise, the oath of the party or his agent shall be required in cases of doubt by the court.

Items of account.

SEC. 19. Whether the instrument in writing or items of account be relied upon by the defendant as a defense, or counter claim, it shall be sufficient to file them with the justice stating the amount claimed thereon, and the court or jury shall proceed and try the matters of difference between the parties without further form of issue.

Continuance and adjournment costs.

SEC. 20. When the pleadings of the parties shall have taken place, a continuance for seven days as a matter of course may be allowed if either party desire, but the justice shall upon the application of either party, if sufficient cause be shown upon oath, adjourn the cause for any time not exceeding thirty days, without costs except one dollar each for justice and constable. If the application be made on an adjourned day for a continuance, the costs of summoning and attendance of witnesses shall be paid by the party seeking the continuance, if the court shall so order.

Title to land in question.
Proceedings returned to district court.

SEC. 21. If it appear, on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to land or boundaries shall be disputed or brought in question by the other party by pleading or evidence, the justice shall immediately make an entry thereof in his docket, and cease all further proceedings in the cause, and

shall certify and return to the district court of the county a transcript of all the entries made in his docket relating to the case, together with all the processes and other papers relating to the suit, in the same manner, and within the same time as upon an appeal; and thereupon the district court shall proceed in the cause to find judgment and execution, the same as if the said suit had been originally commenced therein, and the costs shall abide the event of the suit.

TITLE IV.

Set Offs.

SEC. 22. The defendant may set off against the claim of the plaintiff, when such claim arises out of any form of contract, any demand arising between, or existing between all the parties to the action when the same was commenced, when such demand shall arise upon a judgment or upon a contract express or implied, written or unwritten, sealed or without seal, liquidated or unliquidated, if capable of liquidation by calculation, and if the set-off be founded upon a bond, with penalty, the amount equitably due thereon to be set-off.

Offsets.

SEC. 23. All actions must be brought in the name of the real party in interest, and when the action is in the name of the assignee and is founded upon any contract other than a promissory note or bill of exchange transferred before due, any demand against the assignor belonging to the defendant, in good faith before notice of such assignment may be set off against the plaintiff if the demand be such that it might be set off while the claim belonged to the assignor.

*Actions in
name of real party
in interest.
Assignees.*

SEC. 24. If the suit shall be in the name of a trustee or other person in a representative capacity for the use of a *cestui que trust* or other party in interest, which action shall be allowed, notwithstanding the provisions of the preceding section, it shall be lawful for the defendant to set off any claim he may hold at the time said suit was commenced against those whom the plaintiff represents, if the same

*"Cestui que
trust."*

might have been set off in an action brought by those beneficially interested.

Judgment
how rendered in
case of set off.

SEC. 25. If the amount of the set off duly established, equals the plaintiff's debt or demand, judgment shall be entered that plaintiff take nothing by his action. If it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only.

Where contract
is assigned before
commencement
of suit.

SEC. 26. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered for the defendant for the amount thereof; but no such judgment shall be rendered against the plaintiff where the contract which is the subject of the suit shall have been assigned before the commencement of such suit, nor for any balance due from any other person than the plaintiff in the action.

TITLE V.

Subpœnaing Witnesses.

Subpœnas.

SEC. 27. Any justice of the peace may issue subpœnas to compel the attendance of witnesses to give evidence on any trial pending before himself, or for the purpose of taking depositions, or to perpetuate testimony.

How served.

SEC. 29. A subpœna may be served by a sheriff, coroner, constable, or any other person, and shall be served by reading the same or stating the contents thereof to the witness, or by leaving a copy thereof at his usual place of residence with some person belonging to the family of suitable age.

No fees in
certain cases.

SEC. 30. When not served by an officer or some person deputed for the purpose by a justice of the peace, no fees shall be charged in the suit for serving it.

Costs paid by
party ordering.

SEC. 31. If any witness having been subpœned, attend and be not examined by either party, the costs of such witness shall be paid by the party ordering the subpœna, unless the adverse party confessing the matter or otherwise render unnecessary the examination of such witness.

SEC. 32. Whenever it shall appear to the satisfaction of the justice by proof made before him, that any person duly subpoenaed to appear before him in a suit, shall have failed without a just cause to attend as a witness in conformity to such subpoena, and the party in whose behalf such subpoena was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness:

Attachment,
when to issue.

Provided however, That no attachment shall issue against a witness, unless his mileage, and one day's attendance has been tendered or paid in advance.

Provided further, That the witness had demanded the same.

SEC. 33. Every such attachment shall be executed in the same manner as a warrant, and the fees of the officer for issuing and serving the same shall be paid by the person against whom the same was issued, unless he show reasonable cause to the satisfaction of the justice for his omission to attend, in which case the party requiring such attachment shall pay all costs of such attachment.

How executed

SEC. 34. When a person arrested is brought before the justice or when a person in attendance refuses to testify as a witness and no valid excuse be shown the justice may impose a fine on him not exceeding twenty-five dollars. An entry of such fine stating the reason therefor must be made by the justice in his docket, and thereupon shall have the effect of a judgment in favor of the territory of Wyoming against the delinquent, and may be enforced against his person by imprisonment, or against his property. Money collected as fines shall be paid into the county treasury for the support of common schools in said county.

Proceedings
where witness
refuse to testify.

SEC. 35. Every person subpoenaed as aforesaid and neglecting to appear shall also be liable to the party in whose behalf he may have been subpoenaed for damages, which such party may have sustained by his non-appearance.

Witness liable
for damages.
Provido.

Provided, That said witness had one day's attendance.

and his mileage tendered or paid in advance, if demanded by him.

TITLE VI.

Depositions.

Depositions,
how taken.

SEC. 36. Either party in any civil suit pending before a justice may cause the deposition of a witness who resides more than thirty miles from the place of trial to be taken any where in the territory as follows:

First, The moving party shall give notice to the other in writing of the time, place and person, where, when and before whom the said party will appear in order to take the deposition of witnesses, naming such witness or witnesses, which time, shall allow one day for every twenty miles of travel by the usual traveled route from the place where the trial is to be had, to the place where the deposition is to be taken, and if Sunday intervene it shall be excluded in the calculation of days. Such deposition may be taken upon written or oral interrogations as the parties, or either of them, may elect, but if written, the party propounding the same shall be confined thereto.

Second, The party named in such notice to take such evidence, or any party who shall be substituted by mutual consent in case of absence of the party named, or other disability, is hereby authorized to administer an oath to witness and issue subpoenas with like powers of justices of the peace and enforce witnesses attendance before him.

Third, It shall be the duty of the person before whom such deposition is taken, to reduce to writing the evidence given by the witness, together with such interrogatories (if oral) as shall be necessary to render the answers of the witness intelligible; but if interrogatories are in writing, they must be attached to the depositions and returned therewith.

Fourth. When the evidence shall be concluded, it shall be carefully read over to the witness, who shall subscribe the same, and said person so taking such deposition shall attach

a certificate to the effect that the witness appeared before him, was sworn according to law, and signed the evidence as reduced to writing, with a further statement what party or parties appeared, and for whom.

Fifth. The person so taking the depositions of witnesses shall attach to such deposition all exhibits with reference thereto as exhibit "A" and "B," and so on, and also attach the notice to his return under which such evidence was taken.

Sixth. All being completed, the papers or depositions shall be securely sealed and mailed to the justice before whom the cause is pending or may be forwarded in any way that the parties may in writing stipulate.

Seventh. Substantial compliance with the foregoing regulations shall only be required by the justice, where the parties appeared in person or by agent, before the party taking the depositions; but where only the moving party appeared, a full compliance with this law shall be necessary to entitle such deposition to be read.

SEC. 36. The evidence of witnesses who cannot attend before a justice on account of age, sickness, or any bodily infirmity, may be taken in the manner above prescribed, whenever the witness may reside [if] in the territory, and also the deposition of a witness about to leave and being unable to be present at the trial may be taken under the provisions of this act. *Provided*, That the deposition of no person shall be read if such person shall be present in court at the time of trial, or can be easily subpoenaed so as not to delay proceedings before the court.

Evidence in
case of sickness.
Provided.

TITLE VII.

Commissions.

SEC. 37. After an issue of fact shall be joined before a justice, it shall be competent for him upon the application of either party, to issue a commission to take the evidence of a witness or witnesses residing out of the territory, after the

Commission to
take testimony

of those who shall appear, it shall be the duty of the officer to summon a sufficient number of talesmen to supply the deficiency. The jury so selected, shall take the following oath or affirmation: "You and each of you do solemnly swear (or affirm) that you will well and truly try the matter of difference between _____, plaintiff, and _____, defendant, and true verdict give according to law and the evidence given you in court: So help you God." And after having been sworn they shall sit together and hear the several proofs and allegations of the parties, which shall be delivered in public in their presence, and to each witness on any trial the justice shall administer the following oath or affirmation, to-wit: "You do swear in the presence of Almighty God (or affirm, under the pains and penalties of perjury), that the evidence you shall give in this matter of difference between _____, plaintiff, and _____, defendant, shall be the truth, the whole truth, and nothing but the truth: So help you God." And after hearing the proofs and allegations, the jury shall be kept together in some convenient place until they all agree upon a verdict, or be discharged by the justice; and for which purpose a proper officer shall be sworn or affirmed, to whom the said justice shall administer the following oath, to-wit: "You do swear in the presence of Almighty God, that you will, to the utmost of your ability, keep every person sworn in this inquest, together in some private, convenient place, without drink, except water; you will not suffer any person to speak to them, or speak to them yourself, unless by order of the justice, except it be to ask them whether they have agreed on their verdict, or are discharged by the court: So help you God." And when the jurors have agreed on their verdict, they shall deliver the same to the justice, publicly, who is hereby required to give judgment thereupon, and award execution in manner hereinafter directed.

Discharge of
jury.

SEC. 43. Whenever a justice shall be satisfied that a jury sworn in any cause before him, after having been out any reasonable time, cannot agree on their verdict, he may

discharge them and issue a new *venue*, unless the parties consent, that the justice may render judgment.

SEC. 44. Every person who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars. Penalty for non-attendance of jurors.

SEC. 45. The constable shall be in attendance on the court at and during the progress of the trial; and if from challenge or other cause the pannel shall not be full, he may fill the same by summoning talesmen from the bystanders or from the precinct. Talesmen.

SEC. 46. When a jury shall be in attendance and the cause shall be continued, the jurors must attend at the time and place appointed for the trial without further notice. Continuance of suit.

SEC. 47. If either party object to the competency of a juror, the question thereon must be tried in a summary manner by the justice, who may examine the juror or other witness under oath. Competency of jurors.

SEC. 48. When the jury shall have agreed upon their verdict, they shall deliver it to the justice publicly, who shall enter it upon his docket. Verdict delivered publicly.

SEC. 49. It shall be lawful for the justice before whom a cause has been tried on motion, and being satisfied that the verdict was obtained by fraud, partiality or undue means, at any time within seven days after the entering of judgment, to grant a new trial, and he shall set a time for the new trial if the motion be granted, of which the opposite party shall have at least three days notice. Proceedings when verdict is obtained by fraud.
New trial.

SEC. 50. The opposite party shall also have a reasonable notice of such motion for a new trial if the same is not made on the day of the former trial and in the presence of such party; such notice to be given by the applying party. If the new trial shall be granted, or the jury be unable to agree, the proceedings shall be in all respects as upon the return of the summons. Notice of new trial to opposite party.
Failure to agree.

SEC. 51. Upon the verdict being delivered to the justice, and before judgment being rendered thereon, each Juror's fees taxed against the losing party.

juror shall be entitled to receive one dollar which shall be taxed in the costs bill against the losing party. When the jury shall be unable to agree upon a verdict, the same compensation shall be paid them by the party calling the jury, and the same shall be taxed in the cost bill against the losing party.

Bill of exceptions.

SEC. 52. In all cases which shall be tried by or without a jury before a justice of the peace, either party shall have the right to except to the opinion of the justice upon any question of law arising during the trial of the cause; and when either party shall allege such exception it shall be the duty of the justice to sign and seal a bill containing such exceptions, if truly alleged, with the point decided so that the same may be made part of the record in the cause.

TITLE IX.

Entering and Setting Aside Judgments in Certain Cases.

Judgment of dismissal with costs when to be entered.

SEC. 53. Judgment that the action be dismissed without prejudice to a new action, may be entered with costs in the following cases:

First, When the plaintiff voluntarily dismisses the action before it is finally submitted.

Second, When he fails to appear at the time specified in the summons or upon adjournment, or within one hour thereafter.

Actions when to be dismissed.

SEC. 54. If the plaintiff fail to appear at the return day of the summons, the action must be dismissed. If the defendant fail to appear at the return day of the summons, his default shall be recorded, and the plaintiff may proceed to prove his claim, which being established judgment shall be rendered in his favor, and if either party fail to attend at the time to which a trial has been adjourned, or either fail in the proof on his part, the cause may proceed at the request of the adverse party, and judgment must be given in conformity with the proof on his part.

Judgment when to be set aside.

SEC. 55. When judgment shall have been rendered against a defendant in his absence, who having been served with summons failed to appear, the same may be set aside

upon the following conditions, cause being shown by affidavits:

First, That his motion be made within ten days after such judgment was entered upon notice to the opposite party.

Second, That he pay the costs awarded against him.

Third. That he notify in writing the opposite party, his agent or attorney, or cause it to be done, of the opening of such judgment and of the time and place of trial, at least five days before time if the party reside in the county, and if he be not a resident of the county, by leaving a written notice thereof at the office of the justice ten days before its trial. Conditions.

SEC. 56. Upon a verdict the justice must immediately render judgment accordingly, when the trial is by the justice, judgment must be entered immediately after the close of the trial, if the property of the defendant has been attached. In other cases it must be entered either at the close of the trial or within twenty-four hours thereafter, unless Sunday intervene, then forty-eight hours. Immediate judgment in cases of attachment.
In other cases when to be rendered.

SEC. 57. When the amount due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be entered for the residue. A defendant need not remit such excess, and may withhold setting the same off, and a recovery for the amount set-off and allowed, or any part thereof, shall not be a bar to his subsequent action for the amount withheld. When either party may remit excess of dues beyond justice's jurisdiction.
When otherwise.

SEC. 58. If the defendant, any time before trial, offer in writing, to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor with the costs then accrued. But if he does not accept such offer before the trial, and fail to recover in the action a sum exceeding the offer, he cannot recover costs accrued after the offer, but costs must be adjudged against him; but the offer and failure to accept it, can not be given in evidence to effect the recovery, otherwise than the costs as above provided. Offer to allow judgment.
Amount of costs when offer is not accepted.

TITLE X.

Set-off of Judgment Against Judgment.

Mutual judgments set off.

SEC. 59. If there be mutual justice's judgments between the same parties, upon which the time for appealing has elapsed, one judgment on the application of either party, and reasonable notice given to the adverse party, may be set-off against the other, by the justice before whom the judgment against which the set-off is proposed may be entered.

When transcript to be produced.

SEC. 60. If the judgment proposed as a set-off was rendered before another justice, the party proposing such set-off must produce before the justice a transcript of such judgment, upon which there is a certificate of the justice rendering the judgment, that it is not satisfied in whole or in part, and that there is no appeal, and such transcript was attained for the purpose of being a set-off against the judgment to which it was offered as a set off. The justice granting such transcript shall make an entry thereof in his docket, and all further proceedings on such judgment shall be stayed unless such transcript shall be returned with the proper justice's certificate therein. That it has not been allowed in set-off.

Justice to make entry thereof.

Execution.

SEC. 61. If any justice shall set-off one judgment against another, he shall make an entry thereof in his docket, and execution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgment rendered by another justice to be set-off, he may file such transcript among the papers relating to the judgment in which it is allowed in set-off. If he shall refuse such transcript as a set-off, he shall so certify on the transcript and return the same to the party who offered it; if executions shall have been issued on judgments set-off, they shall be recalled by the proper justice and the costs upon such execution set-off with the judgment where the same is chargeable to the judgment debtor, the duty of the justice being to balance the larger judgment with the lesser one, to the amount of the lesser one together with legal costs thereon.

Certificate.

Duty of justice to balance judgments.

TITLE XI.

Judgment by Confession.

SEC. 62. That any justice of the peace in this territory ^{Confession of judgment. Stay of execution.} may enter a judgment by confession, when the debts or damages shall not exceed one hundred dollars, with such stay of execution as may be agreed on by the parties interested in such judgment.

SEC. 63. No confession shall be taken or judgment ^{Requisites to confession.} rendered thereon, unless the following requisites be complied with.

First, The defendant must personally appear before the justice.

Second, The confession shall be in writing, signed by the defendant and verified by his oath, and filed with the justice.

Third, If it be for money due or to become due, the confession must state concisely the facts out of which it arose, and must show that the sum confessed therefor is honestly due or to become due. If it is for the purpose of securing a contingent liability, it must state concisely the facts constituting the liability, and must show that the sum confessed therefor does not exceed the same.

SEC. 64. The statement and affidavit must be filed with ^{Statement and affidavit to be filed.} the justice of the peace, who must indorse upon it the time of filing, and must enter upon his docket a judgment for the amount confessed, with three dollars costs.

SEC. 65. Every justice on demand of any person in ^{Certified transcript of judgment.} whose favor a judgment has been confessed as herein before provided, or rendered upon trial before him for any sum exceeding ten dollars without cost, shall give a certified transcript of such judgment, and the clerk of the district court of the same county in which judgment was rendered, shall upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in the judgment docket of the district court, and shall note the time of filing such transcript.

SEC. 66. Every such judgment from the time of filing the transcript thereof and docketing the same, shall have the

Judgment to
constitute lien on
real estate.

same lien on the real estate of the defendant or defendants, in the county, as may be allowed by law to a judgment of the district court of the same county, shall be equally under the control of the district court, and shall be collected by execution in the same manner and with like effect as the judgment of such district courts; but no execution shall be issued thereon out of the district court until an execution

No goods found

shall have been issued by a justice and returned, no goods found, which execution so indorsed shall be by the justice returned to said district clerk in case of a transcript having been taken.

TITLE XII.

Appeals.

Bill of excep-
tions.

SEC. 67. The only mode of taking a final judgment in a civil action to the district court shall be by appeal as provided herein. When the case before the justice shall turn upon questions of law, and a bill of exceptions shall be filed as provided in section fifty-three of this act, such appeal shall have the same effect as a *certiorari* at the common law and nothing but a review of the questions of law involved shall be allowed in the district court except as herein provided: amendments to the record so as to intelligently present the questions of law may be allowed. The fact or question whether a decision upon the points of law raised will dispose of the case, shall be determined by the appellate court, and if in the opinion of the court a ruling upon the law of the case will not settle the rights of the parties, the case shall stand for trial *de novo*. In all other cases of appeal a trial *de novo* shall be had with a right to parties as of course to amend or substitute new pleadings, but not new bills of items, or particulars, or amendments thereof without leave of court.

Whenever to be
had.

Under taking.

SEC. 68. The appealing party shall, within ten days after the rendition of the judgment enter into an undertaking to the adverse party with at least one surety to be approved by the justice in a sum not less than fifty dollars

in any case, nor less than double the amount of the judgment and costs. Conditioned:

Conditions.

First, That the appellant will prosecute his appeal to effect and without unnecessary delay.

Second, That if judgment be rendered against him on the appeal, or his appeal be dismissed, he will satisfy such judgment and costs. Such surety must be a resident of the county and a property holder therein.

The undertaking above provided for may be in substance as follows:

A. B. } We, A. B. as principal and C. D., as surety,
 vs. } undertake and promise E. F. (the opposite
 E. F. } party) that the appellant shall prosecute his
 appeal to effect and without unnecessary delay, and that if ^{Form.}
 judgment be rendered against the appellant, or his appeal
 be dismissed, he shall satisfy such judgment and costs.
 Dated _____ 18 _____

A. B.

C. D.

Any person may be recited as principal in the undertaking in the absence of the party, varying the form of the undertaking to meet the case. Before the justice shall allow an appeal, in addition to the above undertaking he shall require the appellant or his agent to make an affidavit that such appeal is made in good faith and not for the purpose of delay, and that he verily believes injustice has been done him by the verdict or judgment, and shall pay all justice and constable's costs for official services, but not the costs of witnesses or subsistence or care of property attached or levied upon. The justice shall be entitled to one dollar and fifty cents for his transcript and allowance of appeal to be prepaid.

Any person may
be principal.

SEC. 69. An appeal being allowed, the justice shall make a certified transcript of his docket entries, and shall send up to the district court such transcript, together with all the original papers on file in the case, including undertaking and affidavit for the appeal, with a certificate or state-

Transcript of
docket entries.

Certificate. ment over his signature as justice, that such transcript is correct, and that original papers sent are all that are on file in the case; such appeal papers may be given to the appellant, his agent or attorney, or to the clerk of the district court to which the appeal may be taken, on or before the second day of the term next following such appeal, and the case shall stand for argument or trial at such time without further notice, any rule of the court or law to the contrary notwithstanding. If such appeal shall be taken after the second day of the term, the appeal shall not be heard without consent of parties until the next term.

Time of trial of appeal.

Execution to be recalled. SEC. 70. Upon an appeal being allowed, the justice shall recall any execution issued upon the judgment, and the costs of such execution shall abide the event of the suit on appeal.

Clerks duties. SEC. 71. Upon receiving such appeal papers from a justice, it shall be the duty of the clerk of the district court at any time up to, and upon the second day of the term, to docket the same without a note of issue, and appeals shall stand for trial in the order of the date upon which judgments were severally rendered, the plaintiff in the court below shall be plaintiff above.

Filing transcript. SEC. 72. The justice or appellant failing on the second day of the term to which such case shall be appealed, to file such transcript and original papers, the appellee without costs (if the fault be that of the justice) and by paying one dollar and fifty cents, (if the fault by that of the appellant) shall be entitled to a transcript of the docket and proceedings before the justice, and may at any time during the term docket the case, and move its dismissal, or for judgment in his favor if he had judgment below, or the cause may stand for trial, or be otherwise dispensed with, as in the opinion of the court justice may require.

Dismissal.

Judgment.

Irregularity. SEC. 73. No appeal shall be dismissed because of any irregularity in taking the same. If the appellant shall supply the imperfections or irregularity before the cause is reached for argument or trial.

SEC. 74. No appeal shall be allowed upon judgments by confession, or when the judgment below shall be less than twenty-five dollars. No appeal on judgments by confession.

SEC. 75. If any person, appealing from a judgment rendered in his favor, shall not recover a greater sum by fifteen dollars than the amount for which judgment was rendered, besides costs and the interest accruing thereon; where the trial is *de novo*, every such appellant shall pay the costs of such appeal, (including a fee of ten dollars to defendant's attorney); and in case the defendant shall demand a greater set-off, before the justice, there shall be allowed him in case he takes an appeal to the district court, he shall in like manner pay all costs in the appellate court, including a like fee to the plaintiff's attorney. When costs to be paid by appellant.

SEC. 76. When any appeal shall be dismissed or quashed, or when judgment shall be entered in the district court against the appellant, the surety in the undertaking shall be liable to the appellee for the whole amount of the debt, costs and damages, recovered against the appellant. Surety liable to appellee.

SEC. 77. When the term of office of a justice shall expire between the dates of judgment and the time limited for appeal, such justice may take the undertaking for appeal at any time before he has delivered his docket to his successor, and give the appealing party a transcript, after the delivery of the docket; the undertaking shall be given to his successor, and it shall be his duty to give the transcript and do and perform all things required of his predecessor. When undertaking to be given to justice's successor.

SEC. 78. If a justice fail to allow an appeal in a case when the same ought to have been allowed, the district court or judge thereof, on such fact satisfactorily appearing, may by rule and attachment compel the justice to allow the same, and to return his proceedings in the suit together with all papers required to be returned by him. Rule to compel justice to allow appeal.

SEC. 79. Whenever the court is satisfied that the return of the justice is substantially erroneous or defective, the court may, by rule and attachment compel him to amend the same. Defective return.

Judgment rendered against sureties.

SEC. 80. In all cases of appeal from a justice's court, if the judgment of the justice be affirmed, or if on trial anew in the district court, the judgment be against the appellant, such judgment shall be rendered against him and his sureties in the undertaking.

Execution enforced against sureties.

SEC. 81. If upon an execution being issued upon such judgment, the principal shall not pay such execution, and the officer cannot find sufficient property of said principal to satisfy the same, such execution shall be enforced against the sureties, and the officer shall specify on his return, by whom the money was paid, and the time thereof.

Interest.

SEC. 82. After the return of an execution satisfied in whole or in part out of the security, such security shall be entitled to a judgment on motion against the principal for the amount so paid by him, together with interest at twelve per cent. per annum from the time of payment; such motion must be made within one year after the return day of the execution, and the return of the officer shall be evidence upon the hearing of such motion of the facts therein stated.

Restitution of amount collected

SEC. 83. If a judgment rendered before a justice be collected, and afterwards be reversed by the court above, the court shall award restitution of the amount collected, with interest from the time of collection, and execution may issue therefor.

TITLE XIII.

Executions.

Execution to issue within five years

SEC. 84. Execution for the enforcement of a judgment before a justice of the peace (except where it has been taken to the district court on appeal, or during the time it may be stayed, as provided by this act), may issue by the justice before whom the judgment was rendered, or by his successor in office, on the application of the party entitled thereto, at any time within five years of entry of the judgment, or the date of the last execution issued thereon.

SEC. 85. The execution must be directed to any constable of the county, and subscribed by the justice by whom

the judgment was rendered, or by his successor in office, and must bear date the day of its delivery to the officer to be executed. It must intelligibly refer to the judgment, by stating the names of the parties, and the name of the justice before whom, and of the county where, and the time when it was rendered, the amount of the judgment, and, if less than the whole is due, the true amount thereon. It must require the constable substantially as follows :

Execution
what to contain.

First, It must direct the officer to collect the amount of the judgment out of the personal property of the debtor, and pay the same to the party entitled thereto.

Second, If it be a case where any of the judgment debtors are certified on the docket as surety, it shall command that the money be made of the personal property of the principal debtor, and for want thereof, of the personal property of the surety. In such cases the personal property of the principal subject to execution within the jurisdiction. shall be exhausted, before any property of the bail shall be taken in execution.

Third, It must in all cases direct the officer to make return of the execution and the certificate thereon, showing the manner in which he has executed the same, in thirty days from the time of his receipt thereof.

SEC. 86. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of his execution, the amount of the debt or damages and costs separately, and the officer receiving such execution shall indorse thereon the time of the reception of the same.

Amount.

SEC. 87. If any execution be not satisfied, it may, at the request of the plaintiff, be renewed from time to time, by the justice issuing the same, by an indorsement thereon to that effect, signed by him, and dated when the same shall be made; if any part of such execution has been satisfied, the indorsement of renewal shall express the sum due on the execution; every such indorsement shall continue the execution in full force, in all respects for thirty days, and no

Execution not
satisfied.

longer. An entry of such renewal shall be made in the docket of the justice.

Garnishees.

SEC. 88. If there be no property found, or if the goods and chattels levied on are not sufficient to satisfy such execution, the officer shall, upon the demand of the plaintiff, summon in writing as garnishees, such persons as may be named to him by the plaintiff or his agent, to appear before the justice on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees; and like proceedings shall be had thereon before the justice to final judgment and execution, as suits instituted by attachment in justice's court.

Officer to give receipt.

SEC. 89. The officer who shall hold an execution, shall receive all money tendered to him in payment thereof, and shall indorse the same on the execution, and give the person paying the same a receipt therefor, in which shall be specified on what account the same was paid, if demanded.

Judgment against bail.

SEC. 90. When any judgment shall be obtained against any person who shall have entered himself bail on the docket of any justice of the peace agreeably to the provisions of this act, the original judgment shall remain good and valid in law, for the use of such bail, who at any time thereafter may sue out execution on such judgment against the goods and chattels of the defendant for the use of such bail, which shall be so indorsed by the justice; and such bail shall also be entitled to a transcript of such judgment, for his own use; which shall have the same force and effect as transcripts in other cases.

Execution against joint debtors.

SEC. 91. Upon an execution on a judgment against joint debtors, upon one or more of whom the summons was not served, the execution shall contain a direction to collect the amount of the joint property of all the defendants, or the separate property of the persons upon whom the summons was served, to be specified by name.

Sureties may be sued.

SEC. 92. In all cases of surety or bail, the plaintiff may sue such surety upon his undertaking, if the amount thereof shall not be collected upon execution as here provided.

TITLE XIV.

Stay of Execution.

SEC. 93. Any person against whom judgment may be rendered under the provisions of this act, except as hereinafter otherwise provided, may have stay of execution for the several periods hereinafter mentioned, by entering into an undertaking with the adverse party within ten days after the rendition of such judgment, with good and sufficient surety, being a resident, property or freeholder of the county, as the justice shall approve, conditioned for the payment of the amount of such judgment, interest, and costs, that may accrue; which undertaking shall be entered on the docket of the justice, and be signed by the surety.

Stay of execution.

Undertaking.

SEC. 94. The stay of execution hereby authorized, shall be granted as follows, namely:

When to be granted.

First, On any judgment exceeding twenty-five and under fifty dollars, the stay shall be for sixty days.

Second, On any judgment for fifty dollars and up to and including one hundred dollars, the stay shall be for ninety days.

SEC. 95. No stay of execution on judgments rendered in the following cases shall be allowed.

No stay of execution in certain cases.

First, On judgments rendered against justices of the peace for refusing to pay over money by them collected or received in their official capacity.

Second, On any judgment rendered against a constable for failing to make return, making a false return, or refusing to pay over money collected in his official capacity.

Third, On judgments against bail for the stay of execution.

Fourth, Where judgment is rendered in favor of bail who have been compelled by judgment to pay over money on account of their principal.

Fifth, On judgments obtained by constables on undertakings executed to them for the delivery of property.

SEC. 96. If the execution issued before the undertaking for stay or that required in case of appeal be given,

When execution to be recalled.

juror shall be entitled to receive one dollar which shall be taxed in the costs bill against the losing party. When the jury shall be unable to agree upon a verdict, the same compensation shall be paid them by the party calling the jury, and the same shall be taxed in the cost bill against the losing party.

Bill of exceptions.

SEC. 52. In all cases which shall be tried by or without a jury before a justice of the peace, either party shall have the right to except to the opinion of the justice upon any question of law arising during the trial of the cause; and when either party shall allege such exception it shall be the duty of the justice to sign and seal a bill containing such exceptions, if truly alleged, with the point decided so that the same may be made part of the record in the cause.

TITLE IX.

Entering and Setting Aside Judgments in Certain Cases.

Judgment of dismissal with costs when to be entered.

SEC. 53. Judgment that the action be dismissed without prejudice to a new action, may be entered with costs in the following cases:

First, When the plaintiff voluntarily dismisses the action before it is finally submitted.

Second, When he fails to appear at the time specified in the summons or upon adjournment, or within one hour thereafter.

Actions when to be dismissed.

SEC. 54. If the plaintiff fail to appear at the return day of the summons, the action must be dismissed. If the defendant fail to appear at the return day of the summons, his default shall be recorded, and the plaintiff may proceed to prove his claim, which being established judgment shall be rendered in his favor, and if either party fail to attend at the time to which a trial has been adjourned, or either fail in the proof on his part, the cause may proceed at the request of the adverse party, and judgment must be given in conformity with the proof on his part.

Judgment when to be set aside.

SEC. 55. When judgment shall have been rendered against a defendant in his absence, who having been served with summons failed to appear, the same may be set aside

upon the following conditions, cause being shown by affidavits:

First, That his motion be made within ten days after such judgment was entered upon notice to the opposite party.

Second, That he pay the costs awarded against him.

Third. That he notify in writing the opposite party, his agent or attorney, or cause it to be done, of the opening of such judgment and of the time and place of trial, at least five days before time if the party reside in the county, and if he be not a resident of the county, by leaving a written notice thereof at the office of the justice ten days before its trial. Conditions.

SEC. 56. Upon a verdict the justice must immediately render judgment accordingly, when the trial is by the justice, judgment must be entered immediately after the close of the trial, if the property of the defendant has been attached. In other cases it must be entered either at the close of the trial or within twenty-four hours thereafter, unless Sunday intervene, then forty-eight hours. Immediate judgment in cases of attachment.

SEC. 57. When the amount due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess, and judgment may be entered for the residue. A defendant need not remit such excess, and may withhold setting the same off, and a recovery for the amount set-off and allowed, or any part thereof, shall not be a bar to his subsequent action for the amount withheld. When either party may remit excess of dues beyond justice's jurisdiction.

SEC. 58. If the defendant, any time before trial, offer in writing, to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor with the costs then accrued. But if he does not accept such offer before the trial, and fail to recover in the action a sum exceeding the offer, he cannot recover costs accrued after the offer, but costs must be adjudged against him; but the offer and failure to accept it, can not be given in evidence to effect the recovery, otherwise than the costs as above provided. When otherwise.

Offer to allow judgment.

Amount of costs when offer is not accepted.

Papers how
transferred.

Fees.

Penalty.

One change
only.

papers to be transferred, and may deliver them to any person agreed upon by the parties or their agents, or if no agreement shall be made, he may appoint some discreet person not interested in the proceedings or of kin to the parties, or to take and deliver the same in person, and the fees for such delivery by any person shall be one dollar and fifty cents, to be taxed in the costs of the case, and it shall be the duty of the person having in charge such papers to deliver the same before the time fixed for the trial under a penalty of twenty-five dollars, in case of failure.

SEC. 103. In no case shall there be more than one change of place of trial allowed.

TITLE XVI.

Sale of property on execution.

Public notice
of sale.

Ten days' no-
tice.

Public vendue.

Adjournment
of sale.

Officer forbid-
den to purchase.

SEC. 104. The officer having levied upon goods and chattels by virtue of an execution, shall without delay give public notice by at least three advertisements put up at three public places in the precinct where the property is to be sold, of the time, and place, when and where, the same shall be exposed for sale. Such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

SEC. 105. At the time so appointed, the officer shall expose the goods and chattels to sale at public vendue and sell to the highest bidder. In case there are no bidders, or if but a single bid be made, the sale shall be adjourned from time to time until a fair sale can be had. The officer shall in all cases return the execution and have the money before the justice at the time of making such return.

SEC. 106. No officer shall directly or indirectly purchase any goods and chattels at any sale made by him upon execution ; but every such sale shall be absolutely void.

TITLE XVII.

Replevin.

Replevin.

Jurisdiction.

SEC. 107. Justices of the peace shall have jurisdiction of actions for the recovery of specific personal property not

exceeding one hundred dollars in value, as herein provided.

SEC. 108. An action for this purpose shall not be brought until there is filed in the office of the justice an affidavit of the plaintiff, his agent or attorney, showing:

Affidavit, what to contain.

First, A description of the property claimed.

Second, That the plaintiff is the owner thereof, or has a special ownership therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property.

Third, That the property is wrongfully detained by the defendant.

Fourth, That it was not taken in execution on any order or judgment against said plaintiff, (or if so taken on execution, that it is by statute exempt from seizure,) or for the payment of any tax, fine or amercement assessed against him, or by virtue of an order of delivery issued under this act or any other mesne or final process issued against said plaintiff; and,

Fifth, The actual value of the property. When several articles are claimed, the value of each article shall be stated as nearly as practicable.

SEC. 109. Upon such affidavit being executed and filed with the justice, he shall issue a summons as in other cases, but with a clause therein commanding the constable immediately to seize and take into his custody, wherever they may be found in the county, the goods and chattels mentioned in the affidavit.

Summons, how issued.

SEC. 110. The constable shall execute the writ by taking the property therein mentioned, he shall also deliver a copy of the summons to the persons charged with the unlawful detention of property, or leave such a copy at his usual place of residence or business, and shall make return of the time and manner of service, and of any undertaking taken by him.

How executed.

Return.

SEC. 111. If, within five days after service of the copy of the summons, there is executed, by one or more sufficient sureties of the plaintiff to be approved by the constable, an

Undertaking within five days.

undertaking to the defendant, in not less than double the amount of the value of the property as stated in the affidavit of the plaintiff, to the effect that the plaintiff will deliver the property to the defendant if such delivery be adjudged, and will pay all costs and damages that may be awarded against him, the constable shall deliver property to the plaintiff. If such undertaking be not given within five days after the taking possession of the property, the constable shall deliver the property to the defendant and the plaintiff or the party making the affidavit shall be liable for all costs made in taking such property, and if not then paid, judgment shall go against him for such costs which may be collected like any other judgment.

Costs

Sufficiency of
sureties.

SEC. 112. The defendant may, within twenty-four hours from the time the undertaking mentioned in the preceding section is given by plaintiff, give notice to the constable that he excepts to the sufficiency of the sureties. If he fails to do so, he must be deemed to have waived all objections to them. When the defendant excepts, the sureties must justify upon notice, as bail on arrest. The constable shall be responsible for the sufficiency of the sureties until the objection to them is waived, as above provided for until they justify.

Responsibility
of constable.

Affidavit of value.

SEC. 113. The affidavit of the plaintiff as to the value of the property, shall fix the jurisdiction of the justice so far as such value is concerned; but the value of the property shall not be assessed against the defendant at a greater amount than that sworn to by the plaintiff in his affidavit.

Jury when to
be impannelled.

SEC. 114. If the property has been delivered to the plaintiff, and he fails to prosecute his action to final judgment, the justice shall, upon the application of the defendant or his attorney impanel a jury to inquire into the right of property, and the right of possession of the defendant to the property taken. If the jury shall be satisfied that the said property was the property of the defendant at the commencement of the action, or if the said jury be satisfied

that the defendant was entitled to the possession at such time, they shall find accordingly, and shall further find the value of such property, or the value of the possession thereof, and any damages for withholding the same as may be just and proper.

SEC. 115. In all cases when the property has been delivered to the plaintiff, when the jury shall find for the defendant they shall also find whether the defendant had the right of property, or the right of possession only, at the commencement of the suit, and, if they find either in his favor, they shall also find the value of the property, or the value of the possession, and such damages for withholding said property as may be just and proper.

Verdict of jury.

SEC. 116. The judgment in the cases mentioned in the two preceding sections, shall be for the return of the property, or the value thereof, or the value of the possession of the same, in case a return cannot be had, and the costs of the suit.

Judgment how rendered.

SEC. 117. In all cases where property has been delivered to the plaintiff, where the jury shall find for the plaintiff on the trial, or on inquiry concerning damages, they shall assess adequate damages to the plaintiff for the illegal detention of the property, for which, with costs of suit, the justice shall render judgment against the defendant.

Assessment of damages.

SEC. 118. When the property claimed has not been taken, the action may proceed as one for damages only, and the plaintiff shall be entitled to such damages as may be right and proper.

When property not taken.

SEC. 119. The constable, in executing the writ, may break open any building or inclosure in which the property claimed, or any part thereof is concealed, but not until he has been refused an entrance into such building or inclosure, and the delivery of the property after having demanded the same.

When constable may break open buildings.

SEC. 120. Whenever it shall be made to appear to the satisfaction of the justice, by the affidavit of the plaintiff, or otherwise, that the defendant, or any other person, knowingly

Concealment of property.

Seventh, Has property or rights in action which he conceals; or

Eighth, Has assigned, removed, or disposed of, or is about to dispose of his property or a part thereof, with the intent to defraud his creditors; or

Ninth, Fraudulently contracted the debt or incurred the obligation for which suit is about to be, or has been brought.

Undertaking. SEC. 127. Before issuing the writ the justice shall require a written undertaking on part of the plaintiff, in a sum not less than fifty dollars in any case, and in double the amount claimed by the plaintiff, with sufficient surety, to the effect that if the defendant recover judgment the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Writ of attachment. SEC. 129. The writ shall be directed to any constable of the county in which the writ is issued, and require him to attach and safely keep all the property of such defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the affidavit, unless the defendant give him security by the *Sureties.* undertaking, of at least one sufficient surety in an amount sufficient to satisfy such demand besides cost, in which case he shall receive such undertaking.

Property subject to attachment. SEC. 130. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits therein, and all debts due such defendant, and all other property in this territory of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

Duty of constable. SEC. 131. The constable to whom the writ is directed and delivered shall execute the same without delay, and if the undertaking herein provided for be not given by the defendant as follows:

First, Personal property capable of manual delivery shall be attached by taking it into custody.

Personal property how attached.

Second, Stock or shares, or interest in stock or shares, of any corporation or company, shall be attached by leaving with the president or other head of the same, or the secretary, cashier or agent thereof, a copy of the writ and a notice stating the stock or interest of the defendant is attached in pursuance of such writ.

Stocks or shares.

Third, Debts and credits, and personal property, not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession or under his control, such credits or other personal property, a copy of the writ, and a notice, and the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control belonging to the defendant, are attached in pursuance of such writ.

Debts and credits.

SEC. 132. Upon receiving information in writing, from the plaintiff or his agent or attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the constable shall serve upon such person a copy of the writ, and a notice that such credits, or other property or debts, as the case may be, are attached in pursuance of such writ.

Service and notice.

SEC. 133. All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendants at the time of service upon them, of a copy of the writ and notice, as provided in the last two sections, shall be, unless such property is delivered up or transferred, or such debts be paid to the constable, liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged or any judgment recovered by him be satisfied.

Liability to plaintiff.

SEC. 134. Any persons owing debts to the defendant, or having in his possession, or under his control, any credits or other personal property belonging to the defendant, may

Examination of defendant and his debtors.

be required to attend before the justice, and be[ing] examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The justice may, after such examination, order personal property capable of manual delivery, to be delivered to the constable on such terms as may be just, having reference to any liens thereon, or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

Inventory.

Oath.

Memorandum.

SEC. 135. The constable shall make a full inventory of the property attached, the value thereof to be ascertained by the oath of two disinterested property holders, and return the same with the writ. To enable him to make such returns as to debts and credits attached, he shall request, at the time of service, the party owing the debt, or having the credit, to give him a memorandum, stating the amount and description of each; and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceeding taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

Perishable property.

Constable's receipt.

SEC. 136. If any of the property attached be perishable, the constable under an order therefor, made by the justice, shall sell the same in the manner in which such property is sold on execution. The proceeds and other property attached by him shall be retained by him, to answer any judgment that may be recovered in the action, unless previously subject to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The constable's receipt shall be a sufficient discharge for the amount paid.

Claimants third parties.

SEC. 137. If any personal property attached be claimed by a third person as his property, the constable, after receiving a written notice to that effect, shall deliver the notice to

a justice of the peace, and on three day's notice to the party in whose favor the execution was issued, the trial of right of property may be had as in other cases. *Provided*, That the constable may refuse to retain possession of property claimed by a third party, unless the party in whose favor the execution issued shall indemnify the constable for holding the same.

Notice.

Proviso.

SEC. 138. If judgment be recovered by the plaintiff, the constable shall satisfy the same out of the property attached by him, which has not been delivered to the defendant, or a claimant, as hereinafter provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose.

Satisfaction of judgment.

First. By paying the whole or his *pro rata* share to the plaintiff, the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall [be] necessary to satisfy the judgment.

Proceedings.

Second. If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under execution, so much of the property personal as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notice of the sales shall be given, and the sales conducted as in other cases of sales on execution.

SEC. 139. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting the fees, to the payment of the judgment, any balance shall remain due, the constable shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment or judgments shall have been paid, the constable, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

Balance now collected.

Delivery of property.

SEC. 140. If the execution shall be returned unsatisfied, in whole or in part, the plaintiff may prosecute any undertaking given pursuant to the provisions of this act; or he may proceed as in other cases upon the return of an execution.

Execution unsatisfied.

Proceedings
when defendant
recovers judgment.

SEC. 141. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales and money collected by the constable, and all the property attached remaining in the constable's hands, shall be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom, with costs to be taxed to the plaintiff.

Discharge of
attachment.

SEC. 142. Whenever the defendant's property shall be attached, he may, upon reasonable notice to the plaintiff, apply to the justice, for an order to discharge the attachment, wholly or in part, upon the execution and filing of the

Undertaking.

undertaking mentioned in the next section. Such order may be granted directing the release from the operation of the attachment, upon the filing of such undertaking and the

Justification of
sureties.

justification of the sureties thereon, if required by the plaintiff of all or any part of the property, money, debts or credits attached, as the case may be. All the proceeds of sales and

Proceeds of sale.

moneys collected by the constable, and all the property attached remaining in his hands, so released, shall be delivered or paid to the defendant upon the filing of such undertaking and making such justification, if required by the plaintiff.

Undertaking,
what to contain.

SEC. 143. On granting such order, the justice shall require an undertaking on behalf of the defendant, with at least one surety, resident and freeholder, house-holder or property holder in the county, to be approved by the justice, which shall be filed to the effect, in case the value of the property or the amount of money, debts, or credits sought to be released, shall equal or exceed the amount claimed by the plaintiff, in the complaint, that the defendant will pay to the plaintiff the amount of the judgment which may be recovered in favor of the plaintiff in the action, not exceeding the sum specified in the undertaking, which shall be at least double the amount so claimed by the plaintiff, or to the effect in case the value of the property or the amount of money, debts, or credits sought to be released shall be less than the amount so claimed by the plaintiff, that the defendant will pay the amount of such judgment, to the extent of the value of the

property or the amount of money, or debts or credits sought to be released, not exceeding the sum specified in the undertaking, which shall be at least double the value of such property, money, debts or credits. The value of the property sought to be released, if disputed, shall be determined by the justice upon proof in a summary manner. The defendant may also, any time before the return day of the writ or upon that, or an adjourned day, apply (upon reasonable notice to the plaintiff), to the justice before whom the action is brought, for the discharge of the attachment, on the ground that the writ was improperly issued, and for that purpose may traverse the affidavit upon which the attachment issued.

Determined in a summary manner.

SEC. 144. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the writ of attachment was issued.

Affidavits.

SEC. 145. If, upon such application, it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged.

When attachment to be discharged.

SEC. 146. The constable shall return the writ of attachment, with the summons, with a certificate of his proceeding indorsed thereon or attached thereto.

Return of constable.

Certificate.

Garnishee.

SEC. 147. The garnishee shall appear before the justice, in accordance with the command of the summons, and shall answer, under oath, all questions put to him touching the property of every description, and credits of the defendant, in his possession or under his control, and he shall disclose truly, the amount owing by him to the defendant, whether due or not; and in case of a corporation, any stock therein held by or for the benefit of the defendant, at or after the service of the notice.

Garnishee.

Corporations.

SEC. 148. A garnishee may pay the money owing to the defendant by him, to the constable having the writ of attachment, or into the court. He shall be discharged from liability to the defendant for any money so paid, not

Payment of money.

Discharge of liability.

exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against him, and if he disclose the property in his hands, or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs.

SEC. 149. * * * * *

Non-appearance.

SEC. 150. If the garnishee do not appear and answer, the justice may proceed against him by attachment, as for a contempt.

SEC. 151. * * * * *

Delivery of property.

SEC. 152. If the garnishee appear and answer, and it is discovered on his examination that at or after the service of the writ of attachment and notice upon him, he was possessed of any property of the defendant, or was indebted to him, the justice may order the delivery of such property, and the payment of the amount owing by the garnishee into the court.

Failure to appear.

SEC. 153. If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff, or if he fail to comply with the order of the justice to deliver the property and pay the money owing into court, the plaintiff may proceed against him in an action, in his own name, as in other cases; and thereupon such proceeding may be had as in other actions, and judgment may be rendered in favor of the plaintiff, for the amount of the property and the credits of every kind of the defendant in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases.

Judgment for plaintiff.

Costs.

Disclosure.

Judgment against garnishee.

Surrender of moneys &c.

SEC. 154. Final judgment shall not be rendered against the garnishee until the action against the defendant in attach-

ment has been determined; and if, in such action, judgment be rendered for the defendant in attachment, the garnishee shall be discharged and recover costs. If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all property, moneys and credits of the defendant in his possession, and pay all moneys from him due as the court may order, the garnishee shall be discharged and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper.

SEC. 155. If the writ of attachment shall be issued at the commencement of the suit, it shall contain the substance of a summons, and no separate summons shall be necessary. If said writ shall be issued after the summons, the said writ shall be made returnable at the same time of the summons, and all pleadings and proceedings before the justice shall be the same as in other cases commenced by summons.

Writ to contain substance of summons.

Return of writ.

SEC. 156. It shall be competent for any plaintiff, his agent or attorney after suit shall be commenced by summons, to require the officer holding said summons on an execution, to summons any person, party or corporation as garnishee of the defendant, such summons to be served the same as an original summons, but may be issued by the justice or officer serving it, being but a notice. Before the justice or other officer in cases commenced by summons merely, shall issue such summons, the plaintiff or some one in his behalf shall make an affidavit that he verily believes that a certain firm, company or corporation (naming the same) within the county, is indebted to, or has property, credits or effects, stock, or other thing of value in his or its possession belonging to the defendant, and that he demands the garnishment of the same, and deliver the same to the officer holding the summons or execution for service. Such affidavit shall be returned with other papers to the justice.

Plaintiff's requirement to officer in certain cases.

Affidavit.

Return.

SEC. 157. When several attachments are issued by the same justice, executed upon the same property, or the same persons are made garnishees at any time before a judgment

Several attachments.

All attaching
creditors.

Pro rata.

shall be entered upon the first attachment, the property or debts or sum of money attached shall be deemed to belong to *all* attaching creditors, and the proceeds, if not enough to pay all, shall be divided after the costs shall be paid *pro rata* among such creditors in proportion to the amount of the claim of each in court.

Officer to be
custodian.

SEC. 158. The officer first attaching shall be the custodian of the property attached or garnisheed, and paid over to him, and shall sell the property attached upon the various executions or upon the order of the justice, and shall make return of his doings to the justice, and he shall pay over the proceeds *pro rata* as herein provided.

Proceedings
when defendant
cannot be sum-
moned.

Publication of
notice that writ
has issued.

SEC. 159. When the defendant cannot be summoned, and his property or effects shall be attached, if he do not appear to the action at the return of the writ, the justice shall enter an order in his docket, requiring the plaintiff to give notice to the defendant by publishing in a newspaper, if there be one printed in the county, or by three written or printed advertisements, posted up at three of the most public places in the county, that a writ has been issued against him, and his property attached to satisfy the demand of the plaintiff; and that unless he appear before the justice at some time and place to be mentioned in said notice, not less than twenty nor more than sixty days from the date thereof, judgment will be rendered against him, and his property sold to pay the same.

Judgment.

Form of notice.

SEC. 160. The notice may be in the following form:

Territory of Wyoming, } ss
County, . }

To

You are hereby notified that a writ of attachment has been issued against you, and your property attached, to satisfy the demand of _____ amounting

to _____ . Now, unless you shall appear before J. P., a justice of the peace in and for said county, at his office, on the _____ day of _____, A. D. 18 _____, at _____ o'clock in the _____ noon, judgment

will be rendered against you, and your property sold to pay the debt.

Dated this day of A. D. 18 .

Plaintiff.

SEC. 161. Such notice shall be posted up, or published at least thirty days before the expiration of the time at which the party is required to appear, and the posting up may be proved, either by the return of the officer upon a copy of the notice, or by the affidavit of any person who would be a competent witness in the case.

Notice to be posted.

SEC. 162. When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, his default shall be entered by the justice in his docket, and the plaintiff may proceed thereon to final judgment as in actions commenced by summons; but no execution shall be issued on such judgment, either against the defendant, or money paid to the justice thereon, until the plaintiff, or some person in his behalf, shall execute a bond in double the amount of such judgment, to the defendant with security, to be approved by the justice, conditioned that if the defendant shall, within one year from the rendition of such judgment, appear and disprove the debt or damages adjudged against him, or any part thereof, the plaintiff will refund the whole, or such part thereof as may be found not justly due him in a review of the case.

Default.

Bond.

Execution.

TITLE XIX.

Forcible entry and Detainer.

SEC. 163. Any justice within his proper county, shall have power to inquire in the manner herein after directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same as against those who, having a lawful and peaceable entry into lands or tenements, unlawfully or by force hold the same; and if it be found upon such inquiry that an unlawful and forcible entry has been made, and that the same lands or tenements are held by force, or that the same, after a lawful

Forcible entry and detainer.

entry are held unlawfully, then said justice shall cause the party complaining to have restitution thereof.

Proceedings.

Tenants.

Judgment debt.
or.

No color of title.

Notification to
adverse party.

Service of notice.

Summons what
to contain.

Non-appearance
of defendant.

Complaint.

SEC. 164. Proceedings under this act may be had in all cases against tenants holding over their terms, or after a failure to pay rent for three days after the same shall be due, in sales of real estate, on executions, orders, or other judicial process, when the judgment debtor was in possession at the time of the rendition of judgment or decree, by virtue of which such sale was made; in sale by executors, administrators, guardians, and on partition where any of the parties to the petition were in possession at the commencement of the suit, after such sales so made on execution or otherwise shall have been examined by the proper court, and the same by such court adjudged legal; and in cases where the defendant is a settler or occupier of the lands or tenements without color of title, and to which the complainant has the right of possession; this section not to be construed as limiting the provisions of the first section of this act.

SEC. 165. It shall be the duty of the party desiring to commence an action under this act, to notify the adverse party to leave the premises, for the possession of which the action is about to be brought; which notice shall be served at least three days before commencing the action, by leaving a written copy with the defendant, or at his usual place of abode or business if he cannot be found.

SEC. 166. The summons shall state the cause of the complaint against the defendant, and the time and place of trial, and shall be served and returned as in other cases. Such service shall be three days before the day of trial appointed by the justice.

SEC. 167. If the defendant does not appear in accordance with the requisition of the summons, and it shall have been properly served, the justice shall try the cause as though he was present, but before he shall proceed, the plaintiff shall file a complaint in which shall be described the property, the possession of which is claimed, and the facts

upon which he relies in order to recover the premises which must be sustained by proof or the action must be dismissed.

SEC. 168. If the defendant shall appear, a like complaint shall be filed as provided in the next preceding section, and shall be admitted or denied by the defendant. If the defendant deems the complaint insufficient in law, he may move to strike the same from the files; such motion shall have the effect of a demurrer; if the motion is sustained the plaintiff may be allowed to amend in furtherance of justice, or he may stand by his complaint and take exceptions to the ruling on the motion. If the motion is overruled, the defendant may take like exception to the ruling, and may answer over or not as he pleases. If no answer be put in he shall not be allowed to offer evidence upon his part. Shall only be allowed to cross-examine the plaintiff's witness. If he shall answer over it shall not waive the exception taken on overruling his motion.

Proceedings on appearance of defendant.

Motion to strike from files.

Cross examination.

SEC. 169. No continuance shall be granted for a longer period than eight days, unless the defendant applying therefor shall give an undertaking to the adverse party, with good and sufficient surety, to be approved by the justice, conditioned for the payment of the rent that may accrue, if judgment be rendered against the defendant.

Continuance.

Undertaking.

SEC. 170. If the suit be not continued, place of trial changed, or neither party demand a jury, upon the return day of the summons, the justice shall try the cause; and if, after hearing the evidence, he shall conclude that the complaint is not true, he shall enter judgment against the plaintiff for costs; if he find the complaint true, he shall render a general judgment against the defendant and in favor of the plaintiff for restitution of the premises and costs of suit; if he find the complaint true in part, he shall render a judgment for the restitution of such part only, and the costs shall be taxed as the justice shall deem just and equitable.

When justice shall try cause.

Judgment.

Costs.

Restitution.

SEC. 171. If a jury be demanded by either party, the proceedings until the impanelling thereof, shall be in all respects as in other case. If the jury find the complaint true,

Jury.

Verdict. they shall render a general verdict of guilty against the defendant; if not true, then a general verdict of not guilty. If true in part, then a verdict setting forth the facts they find true.

Verdict to be entered on docket. SEC. 172. The justice shall enter the verdict upon his docket, and shall render such judgment in the action as if the facts authorizing the finding of such verdict had been found to be true by himself.

Exceptions. SEC. 173. Exceptions to the opinion of the justice in cases under this act, upon questions of law and evidence, may be taken by either party, whether tried by a jury or otherwise.

Writ of restitution. SEC. 174. When a judgment of restitution shall be entered by a justice, he shall, at the request of the plaintiff, his agent or attorney, issue a writ of restitution thereon.

Execution of writ. SEC. 175. The officer shall, within ten days after receiving the writ, execute the same by restoring the plaintiff to the possession of the premises, and shall levy and collect the costs, and make return as upon other executions.

Costs. SEC. 176. If the officer shall receive a notice from the justice that the proceedings have been stayed by an allowance of an appeal, he shall immediately delay all further proceedings upon writ of restitution, and if the premises have been restored to the plaintiff, he shall immediately place the defendant in the possession thereof, and return the writ with his proceedings and costs taxed thereon, and in case the constable shall be resisted in enforcing the writ, he may call in the aid of the county.

Appeals. SEC. 177. Appeals shall be allowed as in other cases and under like conditions, when taken by the plaintiff, but when taken by the defendant, he shall enter into an undertaking with a further condition to pay double the amount specified in the lease and all damages, if not under a lease, then conditioned to pay double the value of the use of the premises and all damage.

Lis pendens no bar to ejectment. SEC. 178. The pendency of this action shall not be a bar to an action of ejectment.

TITLE XX.

Contempt.

SEC. 179. In the following cases and no others, a justice of the peace may punish for contempt: Contempt of court.

First, Persons guilty of disorderly, contemptuous and insolent behavior towards such justice, whilst engaged in the trial of a cause, or in rendering judgment, or in any judicial proceedings, which tends to interrupt such proceedings, or to impair the respect due to his authority.

Second, Persons guilty of any breach of peace, noise, or disturbance, tending to interrupt the official proceedings of such justice.

Third, Persons guilty of resistance, or disobedience to any lawful order or process made or issued by him.

SEC. 180. Punishment for contempt may be by fine not exceeding twenty dollars, or by imprisonment in the county jail not exceeding two days, unless otherwise provided in the discretion of the justice. Punishment.

SEC. 181. No person shall be punished for contempt before a justice of the peace, until an opportunity shall have been given him to be heard in his defense, and for that purpose the justice may issue his warrant of attachment to bring the offender before him. Opportunity of defense.

SEC. 182. If the offender be present he may be summarily arraigned by the justice and proceeded against in the same manner as if a warrant had been previously issued, and the offender arrested thereon. Assignment.

SEC. 183. The warrant of commitment for any constable, shall set forth the particular circumstances of the offense, or it shall be void. Mittimus.

SEC. 184. Where any witness attending before a justice of the peace, in any cause, shall refuse to be sworn in some form prescribed by law, or to answer any pertinent or proper question, such justice may, by order, commit such witness to the jail of the county. Recusant witness.

Specifications
in mittimus.

SEC. 185. Such order shall specify the cause for which the same was issued; and if it be refusing to answer any question, such question shall be specified therein; and such witness shall be closely confined pursuant to such order, until he be sworn, or answer, as the case may be.

Adjournment.

SEC. 186. The justice shall thereupon adjourn such case, at the request of the party, for such time as shall be reasonable, or until such witness shall testify in the case.

Failure to attend when to constitute contempt.

SEC. 187. If any person duly subpoenaed, and obliged to attend as a witness, shall fail to do so, he shall be considered guilty of contempt, and shall be fined all the costs for his apprehension, unless he shall show reasonable cause to the satisfaction of the justice, for his omission to attend; in which case the party requiring such appearance, shall pay the costs thereof.

TITLE XXI.

Arbitration.

Proceedings by arbitration.

SEC. 188. Any civil cause pending before a justice may be, by agreement of parties, submitted to the arbitration of three men, the parties each to select one arbitrator, and the two, a third, who shall be sworn by the justice and proceed in a summary manner to hear the cause, either when so sworn, or at some future day to be ordered by them. Either of said arbitrators shall have power to administer oaths to witness, issue subpoenas for witnesses and compel their attendance with like powers of courts to punish for contempt. They shall make their awards in writing; any two concurring shall be the award of all, such award being reported to the justice, he shall enter judgment according to its terms, and such judgment shall conclude the rights of the parties, and no appeal shall be allowed; *Provided*, That when it shall be made satisfactorily to appear before the justice within ten days after the entry of judgment, that such award was obtained by fraud, corruption, or any undue means, the justice shall set aside such award, and the case shall stand for trial as though no award had been made.

Awards.

Proviso.

SEC. 189. If either party shall feel aggrieved by the decision of the justice upon the motion to set aside the award upon the grounds of fraud, corruption, or undue means, an appeal may be taken as in other cases and under the same regulations.

Motion to set
aside award.

SEC. 190. And if on appeal from the judgment of a justice rendered on any such award, the district court shall be satisfied that the award was obtained by fraud, corruption, or other undue means, such court shall set aside the award, and proceed to hear and determine the cause on the merits, as in other cases of appeal.

Appeal.

SEC. 191. But if the court shall be of opinion that the award was not obtained by fraud, corruption or other undue means, it shall render judgment thereon for costs of suit, and award execution as in other cases.

Judgment.

Costs.

Execution.

TITLE XXII.

General Provisions.

SEC. 192. Whenever, by reason of a dismissal, non-suit, or for any other cause, a judgment shall be rendered against either party for costs only, by a justice of the peace, execution may issue to enforce such judgment, in the same manner and with the same effect as in every other case.

Execution to
recover costs.

SEC. 193. In case any justice of the peace shall die, or his office shall in any wise become vacant, and any books or papers belonging to such justice in his official capacity, shall come into the hands of any person, the nearest justice may demand and receive such books and papers from the person having the same in his possession.

Vacancy in of-
fice.

Proceedings.

SEC. 194. If any books or papers required to be delivered to the nearest justice by the preceding section, be withheld, or if any justice shall refuse to deliver over to his successor any books or papers, in either case the person entitled to receive the said books or papers, may make complaint to the district judge of the district court of the proper county, and if such judge be satisfied by the oath of the complainant, or any other person, that any such books or

Refusal to de-
liver records.

papers are withheld, he may grant an order directing the person so refusing, to show cause before him on a day to be mentioned in said order, why he should not be compelled to deliver the same.

Warrant of
commitment.

SEC. 195. At the time so appointed, or at any other time to which the matter may be adjourned, upon due proof being made of the service of such order, such judge shall proceed to inquire into the circumstances, and if it shall appear that the said books and papers are withheld, the officer before whom the proceedings are had, shall, by warrant, commit the person so withholding, to the jail of the proper county, there to remain until he shall deliver the books and papers, or be otherwise discharged according to law.

Neglect to pay
over money.

SEC. 196. If any money shall be collected for any party by a justice of the peace in his official capacity, and he shall have neglected or refused, within a reasonable time after demand, to pay over the same, such neglect or refusal shall be deemed a misdemeanor, and on conviction thereof, such justice shall forfeit his office.

Publicity of
courts.

SEC. 197. The courts of justice of the peace shall be public, and every person may freely attend the same.

Deposit of of-
ficial docket with
successor.

SEC. 198. It is the duty of every justice upon the expiration of his term of office, to deposit with his successor his official docket, as well his own as those of his predecessor, which may be in his custody, together with all files and papers, laws and statutes pertaining to his office, there to be kept as public records and property. If there be no successor elected and qualified, or if the office become vacant by death, removal from the county or otherwise, before his successor is elected and qualified, the docket and papers in the possession of such justice must be deposited with the nearest justice in the county, there to be kept until a successor be chosen and qualified, then to be delivered over to such successor on request, or if there shall be no justice in the county, then to deposit the docket and papers with the recorder.

SEC. 199. The justice with whom the docket of another may be deposited, either during a vacancy, or as a successor, is hereby authorized, while having such docket legally in his possession, to issue execution on any judgment there entered and unsatisfied, and not docketed in the district court in the same manner and with the same effect as the justice, by whom the judgment was rendered might have done; to take bail in appeal, or for stay of execution; to issue certified transcripts of judgments on such docket, and proceed in all cases in like manner as if the same had been originally had or instituted before him.

Successor to justice execution.

SEC. 200. It shall not be lawful for any justice of the peace to purchase any judgment, upon any docket in his possession; and for so doing, and for every such offense, such justice shall forfeit and pay a sum not more than fifty dollars nor less than ten dollars, to be recovered by an action before any court having jurisdiction thereof, and when collected, shall be paid into the treasury of the county where such offense was committed. Said money when so collected and paid in shall be for the support of common schools in said county.

Justice forbidden to purchase judgment.

SEC. 201. Nothing in this act contained shall be so construed as to authorize the arrest or imprisonment of any citizen of this territory for debt, and nothing in this act shall apply to property, real or personal, goods or chattels, rights or credits, interests or estates, exempt by law from levy, seizure or sale under execution.

No authority to arrest or imprison for debt.

SEC. 202. All constables shall be ministerial officers in justice's courts in their respective counties in civil and criminal cases, and civil process may be executed by them throughout the county, and criminal process in any county of the territory.

Ministerial officers.

SEC. 203. It shall be the duty of every constable to serve and execute all warrants, writs, precepts, executions and other process to him directed and delivered, and in all respects whatever to do and perform all things pertaining to the office of constable.

Duties of constable.

Peace constables.

SEC. 204. In discharging their duties, constables may call to their aid the power of the county, or such assistance as may be necessary. It shall be the duty of every constable to make due return of all process to him directed and delivered, at the proper office and on the proper return day thereof; or if the judgment be docketed in the district court, appealed, or stayed, upon which he has an execution, on notice, to return the execution, stating thereon such fact.

Indorsement of notice and return.

SEC. 205. It shall be the duty of every constable, on the receipt of any writ or other process (subpoenas excepted) to note thereon the time of receiving the same; he shall also state in his return on the same, the time and manner of executing it.

"Not found."

SEC. 206. No constable shall make a return on any process of "not found" as to any defendant, unless he shall have been once at least to the usual place of residence of the defendant, if such defendant have any in the county.

Apprehension of criminals.

SEC. 207. It shall be the duty of every constable to apprehend, on view or warrant, and bring to justice all felons and disturbers, and violators of the criminal laws of this territory; to suppress all riots, affrays, and unlawful assemblies, which may come to his knowledge, and generally to keep the peace in his proper county.

Approved December 10th, 1869.

CHAPTER 2.

AN ACT DEFINING THE JURISDICTION OF JUSTICES OF THE PEACE IN CRIMINAL TRIALS, AND OF THE PROCEEDINGS THEREIN.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

Jurisdiction of justices.

SEC. 1. That justices of the peace in their respective counties have jurisdiction of, and may hear, try and determine all public offenses, less than felony, except as otherwise provided by law, in which the punishment prescribed by law does not exceed a fine of one hundred dollars, or imprison-

ment for six months on information under oath, saving to the defendant the right of appeal to the district court.

SEC. 2. Criminal actions for the commission of a public offense must be commenced before a justice of the peace, by an information subscribed and sworn to, and filed with the justice. Criminal actions, how commenced.

SEC. 3. Such information must contain: 1st. The name of the county and of the justice, where the information is filed. 2nd. The names of the parties, if the defendants be known, and if not, then such names as may be given by the complainant. 3d. A statement of the acts, constituting the offense in ordinary and concise language, and the time and place of the commission of the offense as near as may be. Information, what to contain.

SEC. 4. The information may be substantially in the following form: Form.

Territory of	}
County of	
vs.	
A. B., defendant,	}

Before justice (here insert the name of the justice.)

The defendant is accused of the crime (here name the offense). For, that the defendant on the day of A. D. 18 , at the (here name the city, village or township,) in the county aforesaid, (here state the act or omission constituting the offense as in an indictment.)

SEC. 5. Immediately upon the filing of such information, the justice may in his discretion, issue a warrant for the arrest of the defendant, directed in the same manner as a warrant of arrest upon a preliminary examination, and may be served in like manner. Warrant of arrest.

SEC. 6. The officer who receives the warrant, must serve the same by arresting the defendant; if in his power, and bringing him without unnecessary delay, before the justice who issued the same. Service of warrant.

SEC. 7. When the defendant is brought before the justice, the charge against him must be distinctly read to him, and he shall be asked whether he is presented by his right Misdemeanor.

name, and be required to plead. If he object that he is wrongfully named in the information, he must give his right name; and if he refuse to do so, or does not object to the name used in the information, the justice shall make an entry thereof in his docket, and he is thereafter precluded from making any such objection.

Pleas, oral or written.

SEC. 8. The defendant may plead the same pleas as upon an indictment; his pleas may be either oral or written, and must be entered on the docket of the justice.

When justice to try issue.

SEC. 9. Upon a plea other than a plea of "guilty," if the defendant do not demand a trial by jury, the justice must proceed to try the issue, unless a change of venue be applied for by the defendant.

Change of venue.

SEC. 10. If a change of venue be applied for, an affidavit must be filed stating that the justice is prejudiced against the defendant, or is a near relation to the prosecutor, upon the charge, or the party injured or interested, or is a material witness for either party, or that the defendant cannot obtain justice before him, as the affiant verily believes.

Affidavit.

Transcript.

SEC. 11. If such affidavit be filed, the change of venue must be allowed, and the justice must immediately transmit all the original papers, and a transcript of all his docket entries in the case, to the next nearest justice in the county, against whom no such objection has been made, who shall proceed to try the case, unless a jury trial be demanded. No more than one change of venue in the same case shall be allowed.

Only one change allowed.

Defendant may demand jury.

SEC. 12. Before the justice has heard any testimony upon the trial, the defendant may demand a jury, which, in all cases, shall be allowed.

Proceedings therein.

SEC. 13. If a trial by jury be demanded, the justice shall direct any peace officer of the county to make a list in writing of the names of twelve inhabitants of the county having the qualifications of jurors in the district court, from which list the prosecutor and defendant may each strike out three names.

Venue.

SEC. 14. In case the prosecutor or the defendant

neglect or refuse to strike out such names, the justice shall direct some disinterested person to strike out the names for either or both of the parties so neglecting or refusing; and upon such names being struck out, the justice must issue a *venire* directed to any peace officer of the county, requiring him to summon the six persons whose names remain upon the list to appear before such justice at the time and place named therein, to make a jury for the trial of the cause.

SEC. 15. The officer to whom such *venire* is delivered, must forthwith summon such jurors, and return the *venire* to the justice within the time therein specified, naming the persons summoned, and the manner of service.

Summoning
of jurors.

SEC. 16. The names of the persons returned as jurors shall be called by the justice, and if upon any such call any of the persons so named do not appear, or are challenged or set aside for any cause, such further number must be summoned as will make a jury of six, after all legal challenges have been allowed.

Talesmen.

SEC. 17. The same challenge for cause may be taken by either party to any individual juror, as on the trial of an indictment for a misdemeanor, but no challenge to the panel is allowed.

Challenge for
cause.

SEC. 18. If the officer by whom the *venire* is received, do not return it as required, he may be punished by the justice for a contempt, and the justice shall issue a new *venire* for the summoning of the same jurors upon which the same proceeding shall be had as upon the one first issued.

Officer may be
presented for
contempt.

SEC. 19. Where six jurors appear and are accepted, they shall constitute the jury.

Six jurors to
constitute jury.

SEC. 20. The justice must thereupon administer to them the following oath or affirmation. "You and each of you do swear, or you do solemnly affirm, (as the case may be,) that you will well and truly try the issue between the territory of Wyoming and the defendant, and a true verdict give according to the evidence."

Oath.

SEC. 21. After the jury are sworn, they must sit together, and hear the proofs and allegations of the parties,

Duty of jury.

which must be delivered in public, after which they may either decide in open court or retire for consideration.

Retirement.

SEC. 22. If they do not immediately agree upon a verdict, they must retire with the sheriff of the county, or some constable, if either such are in attendance upon the court, or in their absence, with some person appointed by the justice, who shall be sworn to the following:

Oath of officers.

"You do swear that you will well keep the jury together in some private place without food or drink, unless otherwise ordered by the court; that you will not permit any person to speak to them, nor speak to them yourself, unless it be to ask them whether they have agreed upon a verdict, and that you will return them into court when they have so agreed."

Delivery of verdict.

SEC. 23. When the jury have agreed on their verdict, they must deliver it publicly to the justice, who shall enter it on his docket.

Jury discharged before verdict for good cause.

SEC. 24. The jury must be kept together after the case is submitted to them, until they have agreed upon and rendered their verdict, unless, for good cause the justice sooner discharge them.

Justice may proceed again to trial.

SEC. 25. If the jury be discharged as provided in the last section, the justice may proceed again to the trial in the same manner as upon the first trial, and so on till a verdict is rendered.

Plea of guilty.

SEC. 26. When the defendant pleads "guilty," or is convicted, either by the justice or by a jury, the justice shall render judgment thereon, of fine or imprisonment, as the case may require, being governed by the rules prescribed for the district court, as far as the same are applicable, in rendering such judgment.

Fine and imprisonment.

SEC. 27. A judgment that the defendant pay a fine, may also direct that he be imprisoned until the fine is satisfied.

Acquittal.

SEC. 28. When the defendant is acquitted, either by the justice or by a jury, he must be immediately discharged.

Costs against prosecuting witness.

SEC. 29. When the defendant is acquitted, the justice shall, if he is satisfied that the prosecution was malicious or

without probable cause, tax the costs against the prosecuting witness, and render judgment therefor.

SEC. 30. Whenever a conviction is had upon a plea of "guilty" or upon trial, the justice must make and sign with his name of office, a certificate of such conviction, in which it shall be sufficient, briefly to state the offense charged, and the conviction and judgment thereon, and if any fine had been collected, the amount thereof.

Certificate of conviction.

SEC. 31. The judgment shall be executed by a peace officer of the county where the conviction is had, by virtue of the warrant under the hands of the justice, specifying the particulars of such judgment.

Execution of judgment.

SEC. 32. If a fine be imposed and paid before commitment, it shall be received by the justice, and by him paid over to the county treasurer, within thirty days after the receipt thereof, for the use of the schools in the county, as provided by law.

Fines paid to county treasurer for use of schools

SEC. 33. If the defendant be committed for not paying a fine, he may pay it to the sheriff of the county or to the justice by whom the commitment was made, but to no other person; who must in like manner, within thirty days after the receipt thereof, pay it into the county treasury for the use of the schools in the county, as provided by law.

Payment to sheriff or justice only.

SEC. 34. The defendant may appeal from the judgment to the district court of the county in which the trial was had.

Appeal.

SEC. 35. The justice rendering a judgment against the defendant must inform him of his right to an appeal therefrom, and make an entry on his docket of the giving such information, and the defendant may thereupon take an appeal by giving notice orally to the justice that he appeals, and the justice must make an entry on his docket of the giving of such notice.

Proceedings.

SEC. 36. The justice must, thereupon, enter an order on his docket, fixing the amount in which bail may be given by the defendant, and the execution of the judgment against the defendant shall not be stayed, unless bail in that

Bail.

Undertaking. amount be put in by an undertaking substantially in the following form.

Form. The Territory of Wyoming, } ss.
County, }

A. B. having been convicted before C. D., a justice of the peace of said county, of the crime of (here designate it generally as in the information) by a judgment rendered on the day of , A. D. 18 , and having appealed from said judgment to the district court of said county, we, A. B., as principal, and E. F., as surety, hereby undertake that the said A. B. will appear in the district court of the said county at the next term thereof, and abide the judgment of said court, and not depart without leave of the same, or that we will pay to the Territory of Wyoming the sum of dollars (the amount of bail fixed).

A. B.

E. F.

Acknowledged before, and accepted by me, at
in the County of , this day of A. D.
18 .

C. D., Justice of the Peace.

Qualifications
of bail.

SEC. 37. The bail must possess the qualifications required in cases of appeal from the district court to the supreme court of the Territory.

How taken.

SEC. 38. The bail may be taken by the justice who rendered the judgment, or by any magistrate in the county who has authority to admit to bail, or by the district court, or the clerk thereof.

Witnesses to
enter into under-
taking.

SEC. 39. When an appeal is taken, the justice must cause all material witnesses to enter into an undertaking, as in a case where a defendant is held to answer on a preliminary examination, to appear and testify on the trial of the appeal in the district court, at a term at which it is returnable, and shall as soon as practicable, and at least ten days before the first day of such term of the district court of the county, file in the office of the clerk thereof, a certified copy of the entries on his docket, together with all the undertakings and papers in the case.

Certified copy
of docket entries.

SEC. 40. The cause when thus appealed shall stand for trial anew in the district court, in the same manner that it should have been tried before the justice, and as nearly as practicable as an issue of fact upon an indictment, without regard to technical errors or defects, which have not prejudiced the substantial rights of either party, and the court has full power over the case, the justice of the peace, his docket entries, and his return to administer the justice of the case according to the law, and shall give judgment accordingly.

Technical errors.

SEC. 41. No appeal from the judgment of a justice of the peace, in a criminal case, shall be dismissed except in the following cases :

No appeal dismissed except in certain cases.

First. Where the supposed offense set out in the information shall not be an offense under the law.

Second. When there shall be no sufficient charge of an offense, and when an appeal shall be dismissed, the defendant cannot be again tried for the same offense.

SEC. 42. If any proceedings be necessary to carry the judgment upon the appeal into effect, they shall be had in the district court, except as otherwise provided in the next preceding section.

Proceedings.

SEC. 43. Either party may appeal from the judgment of the district court to the supreme court, in the same manner as from a judgment in a prosecution by indictment, and the defendant may be admitted to bail in like manner, and similar proceedings shall be had on the appeal in all respects as far as applicable.

Appeal to supreme court.

SEC. 44. The same proceedings shall be had to carry into effect the judgment of the supreme court upon the appeal, as if it had been taken from a judgment prosecuted by indictment.

Proceedings same as by indictment.

SEC. 45. This act shall take effect and be in force on and after the first day of January, A. D. 1870.

Time of taking effect.

Approved December 2, 1869.

CRIMES.

CHAPTER 3.

AN ACT DEFINING CRIME AND PROVIDING FOR THE PUNISHMENT THEREOF.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

TITLE I.

Of crimes and persons capable of committing crimes.

A crime or misdemeanor.

SECTION 1. A crime or misdemeanor consists in a violation of a public law, in the commission of which there shall be a union or joint operation of act and intention, or criminal negligence.

Intention.

SEC. 2. Intention is manifested by the circumstances connected with the perpetration of the offense, and the sound mind and discretion of the person accused.

Sound mind.

SEC. 3. A person shall be considered of sound mind who is neither an idiot nor lunatic, nor affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good and evil.

Infant, when not found guilty.

SEC. 4. An infant under the age of ten years shall not be found guilty of any crime or misdemeanor.

Lunatic, when found guilty.

SEC. 5. A lunatic or insane person without lucid intervals, shall not be found guilty of any crime or misdemeanor, with which he may be charged; *Provided*, The act so charged as criminal shall have been committed in the condition of insanity.

Provided.

SEC. 6. An idiot shall not be found guilty, or punished for any crime or misdemeanor with which he or she may be charged.

Idiot, not found guilty.

SEC. 7. Any person counseling, advising or encouraging an infant under the age of ten years, lunatic or idiot, to commit any offense, shall be prosecuted for such offense when committed, as principal, and if found guilty, shall suffer the same punishment that would have been inflicted on such person counseling, advising or encouraging as aforesaid, had he or she committed the offense directly, without the intervention of such infant, lunatic or idiot.

Person counseling, advising, or encouraging a lunatic, infant or idiot found guilty of crime.

SEC. 8. A married woman acting under the threats, command or coercion of her husband, shall not be found guilty of any crime or misdemeanor not punishable with death, provided it appears from all the facts and circumstances of the case, that violent threats, command or coercion were used; and in such case the husband shall be prosecuted as principal, and receive the punishment which would otherwise have been inflicted on the wife, if she had been found guilty.

Married woman when not guilty.

SEC. 9. Drunkenness shall not be an excuse for any crime or misdemeanor, unless such drunkenness be occasioned by the fraud, contrivance or force of some other person or persons, for the purpose of causing the perpetration of an offense, in which case the person or persons so causing said drunkenness for such malignant purpose, shall be considered principal or principals, and suffer the same punishment as would have been inflicted on the person or persons committing the offense, if he, she or they had been possessed of sound reason and discretion. Where a crime rests in intention, the inebriated condition of the defendant at the time of committing the offense may be proven to the jury, as being upon the question of intention.

Drunkenness no excuse for crime except when.

SEC. 10. Acts committed by misfortune or accident, shall not be deemed criminal, where it satisfactorily appears that there was no evil design or intention, or culpable negligence.

Misfortunes or accidents.

SEC. 11. A person committing a crime or misdemeanor

Persons committing under threats.

not punishable with death, under threats or menaces which sufficiently show that his or her life or member was in danger, or that he or she had reasonable cause to believe, and did believe that his or her life or member was in danger, shall not be found guilty; and such threats or menaces being proved and established, the person or persons compelling by such threats or menaces, the commission of the offense, shall be considered as principal or principals, and suffer the same punishment as if he or she had perpetrated the offense.

If person becomes insane after commission of crime.

SEC. 12. A person that becomes lunatic or insane after the commission of a crime or misdemeanor, ought not to be tried for the offense during the continuance of the lunacy or insanity. If after verdict of guilty and before judgment pronounced, such person become lunatic or insane then no judgment shall be given while such lunacy or insanity shall continue, and if after judgment and before execution of the sentence such person become lunatic or insane, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of such person from the insanity or lunacy. In all these cases it shall be the duty of the court to impanel a jury to try the question whether the accused be at the time of impanelling insane or lunatic.

TITLE II.

Accessories to Crime.

Accessories.

SEC. 13. An accessory is he or she who stands by and aids, abets or assists, or who, not being present, aiding, abetting or assisting, hath advised and encouraged the perpetration of the crime. He or she who thus aids, abets or assists, advises or encourages, shall be deemed and considered as principal, and punished accordingly.

When deemed principals.

Accessories after the fact.

SEC. 14. An accessory after the fact, is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of the crime. Any person being found guilty of being an accessory after the fact, shall be imprisoned for any term, not exceeding two

years, and fined in a sum not exceeding five hundred dollars, in the discretion of the court, to be regulated by the circumstances of the case and the enormity of the crime.

How punished

TITLE III.

Offenses against the Persons of Individuals.

SEC. 15. Every murder which shall be perpetrated by means of poison, or lying in wait, or by any other kind of willful, deliberate and premeditated killing, shall be deemed murder in the first degree, and upon conviction thereof, the perpetrator shall suffer death by hanging by the neck.

Murder.

First degree.

Punishment.

SEC. 16. Any person who shall purposely and maliciously, but without deliberation and premeditation, kill another, such person shall be deemed guilty of murder in the second degree, and on conviction thereof, shall be imprisoned in the penitentiary, or territorial prison, and kept at hard labor during life.

Second degree

Punishment.

SEC. 17. Any person who in the perpetration or attempt to perpetrate any rape, arson, robbery or burglary, shall kill another, such person shall be deemed guilty of murder in the second degree, and on conviction thereof, shall be imprisoned in the penitentiary, or territorial prison, and kept at hard labor during life.

Rape, arson, robbery when death follows.

SEC. 18. If any person shall unlawfully kill another without malice, either upon a sudden quarrel or unintentionally, while the slayer is in the commission of some unlawful act, every such person shall be deemed guilty of manslaughter, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor not more than ten years, nor less than one year, and the length of time between one and ten years, for which the defendant may be imprisoned, shall be fixed by the verdict of the jury.

Killing upon sudden quarrel.

Guilty of manslaughter.

Punishment.

SEC. 19. If any person shall unlawfully kill another in the heat of passion, by means of a dangerous weapon, or in a cruel and inhuman manner, every such person shall be deemed guilty of manslaughter, and upon conviction thereof, shall be imprisoned in the penitentiary, and kept at hard

Killing with dangerous weapon.

Punishment.]

labor not more than ten years, nor less than one year. The jury, by their verdict, shall fix the time of such imprisonment within the period aforesaid.

Killing on account of culpable neglect.

Punishment.

SEC. 20. If any person shall unlawfully kill another, without malice, either upon a sudden quarrel, or unintentionally or by any culpable neglect, or criminal carelessness, every such person shall be deemed guilty of manslaughter, and upon conviction thereof, shall be imprisoned in the penitentiary of the territory not more than four years, nor less than one year, the jury by their verdict shall fix the time of such imprisonment within the period aforesaid.

Homicide when excusable.

SEC. 21. *Homicide* is excusable in the following cases :

First, When committed by accident and misfortune; in doing any lawful act, by lawful means with usual and ordinary caution, and without any unlawful intent;

Second, When committed by accident or misfortune in the heat of passion upon any sudden and sufficient provocation, or upon a sudden combat; *Provided*, That no undue advantage is taken, nor any dangerous weapon used, and that the killing is not done in a cruel or unusual manner;

Third, When resisting any attempt to murder such person, or to commit any felony upon him or her, or upon or in any dwelling house in which such person is;

Fourth, When committed in the lawful defense of such person, or his or her husband, wife, parent, brother or sister, child, master, mistress or servant, when there is a reasonable ground to apprehend a design to commit a felony or to do some great bodily or personal injury, and there is imminent danger of such design being accomplished.

Fifth, When necessarily committed in attempting by lawful ways and means to apprehend any person for any felony committed; or in lawfully suppressing any riot; or in lawfully keeping and preserving the peace.

Duelling to be considered high misdemeanor.

SEC. 22. If any person hereafter shall willfully and maliciously, or by agreement, fight a duel or single combat, with any engine, instrument or weapon, the probable consequence of which might be the death of either party,

and in so doing, shall kill his antagonist, or any person or persons, or shall inflict such wound as that the party injured shall die thereof, within a year and a day thereafter; any such offender, his second, as well as the second of the person killed, and all aiders, abettors and counselors, being thereof duly convicted, shall be considered to have committed a high misdemeanor, and shall be punished by confinement to labor in the penitentiary for any term not exceeding five years nor less than one year.

Punishment.

SEC. 23. If any person shall hereafter challenge another to fight a duel with any deadly weapon, or in any manner whatever, the probable issue of which might result in the death of either, or if any person shall accept a challenge, or agree to fight a duel; any person so offending shall, upon conviction thereof, be rendered incapable of holding or being elected to any office of profit, trust, or emolument, either civil or military, under the government of this territory, and be fined in a sum not exceeding five hundred dollars.

Challenge to fight duel.

Disabilities.

Punishment.

SEC. 24. If any person shall willingly or knowingly carry or deliver any written challenge, or verbally deliver any message intended as, or purporting to be a challenge, or shall be present at the fighting of any duel as aforesaid, as second or aid, or give countenance thereto; such person being thereof duly convicted, shall be subject to the same fines and disabilities as are provided in the case of sending a challenge as aforesaid. It shall not be necessary in an indictment against any person, or persons for fighting a duel, or against their seconds, aiders, abettors or counselors, or against any person for sending or accepting a challenge, or for carrying any challenge, or delivering any message intended as or purporting to be a challenge, or for being present at the fighting of any duel as second, or for aiding or giving countenance to any duel, or the sending or accepting any challenge, to specify the nature or kind of the engine, instrument, or weapon, with which the duel shall be fought, or intended to be fought, so that it be alleged in

Carrying challenge.

Punishment.

Indictment, what to contain.

the indictment, that the engine, weapon, or instrument was deadly, the probable consequence of fighting with which, might be the death of either of the parties.

Poisoning.

SEC. 25. Any person who shall willfully and maliciously administer, or cause to be administered to, or taken by any person, any poison or other noxious or destructive substance, or liquid, with the intention to cause the death of such person, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year, and not more than ten years; and any person who shall administer, or cause to be administered, or taken, any such poison, substance or liquid, or who shall use, or cause to be used, any instrument of whatsoever kind, with the intention to procure the miscarriage of any woman then being with child, and shall thereof be duly convicted, shall be imprisoned for a term not exceeding three years, in the penitentiary, and fined in a sum not exceeding one thousand dollars; and if any woman by reason of such treatment shall die, the person, or persons, administering, or causing to be administered such poison, substance, or liquid, or using or causing to be used, any instrument, as aforesaid, shall be deemed guilty of manslaughter, and if convicted, be punished by imprisonment for a term not less than three years in the penitentiary, and fined in a sum not exceeding one thousand dollars, unless it appear that such miscarriage was procured or attempted by, or under advice of a physician or surgeon, with intent to save the life of such woman, or to prevent serious and permanent bodily injury to her.

Abortion.

Punishment.

Attempt by a woman to procure abortion on herself.

SEC. 26. If any woman shall endeavor privately, either by herself or the procurement of others, to cause the death of any issue of her body, male, or female, which if born alive would be illegitimate, so that it may not come to light, whether it shall have been murdered or not; every such mother being convicted thereof, shall suffer imprisonment in the county jail for a term not exceeding one year; *Provided*, However, that nothing herein contained shall be so construed

Punishment.

Provide.

as to prevent such mother from being indicted and punished for the murder of such illegitimate child.

Mayhem consists in the unlawfully depriving a human being of a member of his or her body, or disfiguring or rendering it useless. If any person shall unlawfully cut out, or disable the tongue, put out an eye, slit the nose, ear or lip, or disable any limb or member of another, or shall voluntarily and purposely put out an eye or eyes, any such person shall be guilty of mayhem, and on conviction shall be punished by confinement in the penitentiary, for a term not less than one year, nor more than three years; *Provided*, That no person shall be found guilty of mayhem, where the fact occurred during a fight had by consent, nor unless it appear that the person accused shall have been the assailant, or that the party maimed had in good faith, endeavored to decline further combat. But in all other cases, where the fact shall happen in actual fight, the party accused being thereof duly convicted, shall be adjudged guilty of a high misdemeanor, and punished by imprisonment in the penitentiary, not exceeding one year, and be fined not exceeding one thousand dollars.

Mayhem, definition of.

Provided.

SEC. 27. Rape is the carnal knowledge of a female, forcibly and against her will. Any male person of the age of fourteen years and upwards, who shall have carnal knowledge of any female child, under the age of ten years, either with or without her consent, shall be adjudged to be guilty of the crime of rape. Every person convicted of the crime of rape, shall be punished by confinement in the penitentiary, for a term not less than one year, and such imprisonment may extend to life.

Rape, now defined.

Punishment.

SEC. 28. It shall not be necessary to prove emission to convict any person of the crime of rape; or the crime against nature.

Emission.

SEC. 29. The infamous crime against nature, either with man or beast, shall subject the offender to be punished by imprisonment in the penitentiary for a term not less than one year, and such imprisonment may extend to life.

Crime against nature.

Punishment.

Assault.

SEC. 30. Any assault is an unlawful attempt, coupled with a present ability to commit a violent injury on the person of another.

Assault with
intent to com-
mit murder, &c.

SEC. 31. An assault with an attempt to commit murder, rape, mayhem, robbery or larceny, shall subject the offender to a confinement in the penitentiary for a term not less than one year, nor more than fourteen years. An assault with a

Other assaults.

deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another a bodily injury, where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant heart, shall be adjudged to be a high misdemeanor, and any person thereof duly convicted, shall be fined in a sum not exceeding two thousand dollars, and imprisoned not exceeding one year in the county jail.

Assault and
battery.

SEC. 32. Assault and battery is the unlawful beating of another.

False imprison-
ment.

SEC. 33. False imprisonment is the unlawful violation of the personal liberty of another, and consists in confinement or detention without sufficient legal authority; any person convicted of false imprisonment shall be fined in any sum not exceeding five hundred dollars, or imprisoned not exceeding one year in the county jail.

Punishment.

Kidnapping.

SEC. 34. Kidnapping is the forcible abduction or stealing away of a man, woman or child from his or her own county, and sending or taking him or her into another.

Punishment.

SEC. 35. Every person who shall forcibly steal, take or arrest any man, woman or child, whether white, black or colored, in this territory, and carry him or her into another country, state or territory, or who shall forcibly take or arrest any person or persons whatsoever, with a design to take him or her out of this territory, without having established a claim according to the laws of the United States, shall upon conviction, be deemed guilty of kidnapping. Every person found guilty of kidnapping shall be confined in the penitentiary for a term not less than one year, and not more than seven years for each person kidnapped or attempted to be kidnapped.

TITLE IV.

Offenses against habitations and other Buildings.

SEC. 36. Every person who shall willfully and maliciously
burn or cause to be burned any dwelling house, kitchen,
office, shop, barn, stable, storehouse, warehouse, factory, mill,
pottery or other building, the property of any other person,
or any church, meeting house, school house, state house,
court house, work house, jail, or other public building; or
any boat or other water craft; or any bridge of the value
of fifty dollars erected across any of the waters of this
territory. Such persons so offending shall be deemed guilty
of arson, and upon conviction thereof shall be punished by
imprisonment in the penitentiary for a term not less than
one year nor more than ten years; and should the life or
lives of any person be lost in consequence of any such
burning as aforesaid, such offender shall be deemed guilty of
murder, and shall be indicted and punished accordingly.

Arson.

Punishment.

SEC. 37. Every person who shall willfully and maliciously set fire to any of the buildings or other property
described in the foregoing section with the intent to burn or
destroy the same, shall be deemed guilty of a high misdemeanor, and upon conviction thereof shall be imprisoned in
the penitentiary for a term not exceeding two years, and be
fined in a sum not exceeding one thousand dollars.

Intent to commit arson.

SEC. 38. Every person who shall, in the night time,
willfully and maliciously and forcibly break and enter, or
willfully and maliciously without force (the door or any
window being open) enter into any dwelling house, kitchen,
office, shop, store house, ware house, malt house, stilling
house, banking house, hotel, saloon, mill, pottery, factory,
water craft, church or meeting house, with intent to commit
murder, robbery, rape, mayhem, larceny, or other felony;
or who being lawfully within any room or apartment of any
of the buildings aforesaid, shall, with like intent, either with
or without force, enter into any other room or apartment of
the same building, shall be deemed guilty of burglary, and

House breaking

upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than ten years.

TITLE V.

Offenses relative to property and Person.

Robbery.

SEC. 39. Robbery is the felonious and violent taking of money, goods or other valuable thing from the person of another by force or intimidation. Every person guilty of robbery, shall be punished by confinement in the penitentiary for a term not less than three years nor more than fourteen years.

Force and violence.

SEC. 40. If any person shall forcibly and by violence, or by putting in fear, take from the person of another any money, or personal property, of any value whatever, with intent to rob or steal, every person so offending shall be deemed guilty of robbery, and upon conviction thereof, shall be imprisoned in the penitentiary, or territorial prison, and kept at hard labor not more than fifteen, nor less than three years.

Accusation.

SEC. 41. If one person shall accuse another of a crime, with a view and intent to extort from such person any money, property or valuable thing, and shall by intimidating such person by such accusation or threat, extort from such person any money, property or valuable thing, the person so offending shall be deemed guilty of a felony, and being thereof convicted, shall pay a fine not exceeding one thousand dollars, and be imprisoned in the penitentiary, or territorial prison not more than seven, nor less than one year.

Larceny

SEC. 42. Larceny is the felonious stealing, taking and carrying, leading, riding or driving away the personal goods of another. Larceny shall embrace every theft which deprives another of his money or other personal property, or those means or muniments, by which the right and title to property, real or personal, may be ascertained. Private stealing from the person of another, and from a house in the day time, shall be deemed larceny. Larceny may also be committed by

feloniously taking and carrying away any bond, bill, note, receipt, or any instrument of writing of value to the owner. Every person convicted of larceny, shall be punished by confinement in the penitentiary for a term not less than one year, nor more than ten years.

SEC. 43. When the property taken is of the value of twenty-five dollars, or when taken from the person of another, of whatever value, or when taken from the sleeping apartment of another in the night time, of whatever value, shall be grand larceny. Larceny in other cases shall be petit larceny. Grand larceny

SEC. 44. Every person who shall be guilty of petit larceny, shall be punished by a fine of not more than one hundred dollars, nor less than five dollars, or by imprisonment in the county jail not more than six months, nor less than one month, or both. In case of conviction of a second offense in the discretion of the court, justices of the peace shall have concurrent jurisdiction with the district court in all cases of petit larceny. Petit larceny.
Second offense.

SEC. 45. Every person who for his own gain, or to prevent the owner from again possessing his property, shall buy or receive stolen goods, or anything, the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, shall, upon conviction, be punished by confinement in the penitentiary for any term not less than one year, nor more than ten years; and every such person may be tried, convicted and punished, as well before as after the trial of the principal. No person convicted of larceny, or of buying or receiving goods, or other things obtained by larceny, burglary or robbery, shall be condemned to the penitentiary, unless the money or the value of the things stolen, bought or received, shall amount to five dollars. Amount of five dollars.

[SEC. 45. All property obtained by larceny, robbery or burglary, shall be restored to the owner, and no sale, whether in good faith on the part of the purchaser or not, shall divest the owner of his right to such property; such owner may Restoration of property.

maintain his action not only against the felon, but against any person in whose possession he may find the same.]

Altering marks
and brands.

SEC. 46. Every person who shall mark or brand, alter or deface the mark or brand of any horse, colt, mare, jack, jennet, mule, or any one or more head of neat cattle, or sheep, goat, hog, shoat or pig, not his or her own property, but belonging to some other person, with the intent thereby to steal the same, or to prevent identification thereof, by the true owner; shall, on conviction thereof, be punished by confinement in the penitentiary for a term not less than one year, nor more than five years; *Provided*, That no person shall be condemned to the penitentiary under this section, unless the value of the property affected shall amount to five dollars. And in case the value of the property affected by the offenses herein described, or by larceny, or by buying or receiving goods, or other property obtained by larceny, burglary or robbery, shall not amount to five dollars, then the offender shall be punished by imprisonment in the county jail for a term not exceeding six months, or fined not exceeding one hundred dollars.

Prevention of
identification.

Proviso.

Servants, offi-
cers, &c.

SRC. [46. Every servant, officer or person employed in any public department, station or office of the government in this territory, or any county of this territory, or in any office of a corporate body, who shall embezzle, steal, secrete or fraudulently take, carry away any money, goods, chattels, effects, book or books of record or of account, bond or bonds, promissory note or notes, bank bills or notes, or any other writing or security for the payment of money or property of whatever description it may be, being the property of said territory, county or corporate body, shall, on conviction, be punished by confinement in the penitentiary for a term not less than one year, nor more than two years.]

Collection of
public moneys.

Refusal to pay
over &c.

SEC. 47. If any officer or person who now is, or hereafter may be, intrusted by law to collect, disburse, receive or safely keep any money or moneys, revenue or revenues, belonging to this territory, to the school fund of this territory, to the school fund of any county or township, to any county

in this territory, to any canal, turnpike or railroad fund of this territory or any county thereof, or to any fund for the improvement of any public road, river, creek, or other water course bordering on or within this territory, or to any other fund now in being, or hereafter to be established by law for public purposes, shall fail or refuse to pay over all moneys, warrants, bills, notes and orders, which any such officer or person shall receive for disbursement, and has not disbursed, or shall collect, or shall receive for safe keeping, belonging to this territory, or to any county of this territory, or to any such fund as aforesaid, when such officer or person shall be thereto required by law, and demand duly made by the successor or successors of such officer or person in office, or by the officer or person to whom such moneys, warrants, bills, notes or orders ought by law to be paid over, or his or their attorney or agent, duly authorized in writing, signed and acknowledged, if such demand be practicable; every such officer or person shall, on conviction thereof, be punished by confinement in the penitentiary for a term not less than one year, nor more than ten years; *Provided*, That no person shall be committed to the penitentiary under this section, unless the money not paid over shall amount to one hundred dollars, or it appear that such failure or refusal shall be occasioned by unavoidable loss or accident. Every person convicted under the provisions of this section, shall forever thereafter be ineligible and disqualified from holding any office of honor or profit in this territory.

Provided.

SEC. 48. Every person who shall fraudulently or maliciously tear, burn, efface, cut or in any other way destroy any deed, lease, bond, will, or any other writing, sealed bank bill, or note, check, warrant for the payment of money or other thing, or other security for the payment of money or the delivery of goods, or any certificate or other public security of this territory, or the United States, or any of them, for the payment of money, or any receipt, acquittance, release, defeasance, discharge of any debt, suit or other demand, or any transfer or assurance of money, stock, goods,

Fraudulent destruction of bonds or other writings.

chattels or other property, or any letter of attorney or other power, or any day-book or other book of account, or any agreement or contract whatsoever, with the intent to defraud, prejudice or injure any person or body corporate, shall upon conviction thereof, be punished by confinement in the penitentiary for a term not less than one year, nor more than five years.

Removal of
boundaries.

SEC. 49. Every person who shall knowingly, maliciously, fraudulently cut, fell, alter or remove any certain boundary tree, or other allowed landmark, to the wrong of his neighbor, or any other person, shall on conviction thereof, pay a fine not exceeding one hundred dollars, or be imprisoned in the county jail for a term not exceeding three months.

Punishment.

Embezzling,
when to constitute larceny.

SEC. 50. If any clerk, apprentice or servant, whether bound or hired, to whom any money, bank bill or note, or goods or chattels, shall be intrusted or be delivered, by his master or mistress, shall withdraw himself or herself from his or her master or mistress, and go away with the said money, bank bill or note, or goods or chattels, or any part thereof, with the intent to steal the same, and defraud his or her master or mistress thereof, contrary to the trust and confidence in him or her reposed, by his or her said master or mistress, shall embezzle the said money, bank bill or note, goods or chattels, or any part thereof, or otherwise shall convert the same to his or her own use with like purpose, every such person so offending shall be deemed guilty of larceny and punished accordingly.

Conversion by
bailee.

SEC. 51. If any bailee by finding or otherwise of any money, bank bill, or note, or goods or chattels, shall convert the same to his or her own use with intent to steal the same, he shall be deemed guilty of larceny, in the same manner as if the original taking had been felonious, and on conviction thereof, shall be punished accordingly.

Lodgers.

SEC. 52. If any lodger take away, with intent to steal, embezzle or purloin any bedding, furniture, goods or chattels, which he or she is to use in or with his or her lodging, he or

she shall be deemed guilty of larceny, and on conviction shall be punished accordingly.

SEC. 53. If any person shall willfully and maliciously <sup>= Displacing rail-
road signals &c.</sup> displace any switch, signal, or rail of any railroad, or shall break down, rip up, injure or destroy any railroad track, or railroad bridge, or any portion thereof, or shall place any obstruction whatever upon any such railroad track, or bridge, or switch, or shall place any false signal upon or in the vicinity of any railroad track with intent that any person or property being or passing upon or over such railroad track or bridge should be injured, delayed or hindered, every such person so offending, shall be punished by imprisonment in the penitentiary not less than one year and not exceeding five years. And if in consequence of any such act done, with the intent aforesaid, any person or property shall in fact be injured, every such person so offending, shall be punished by imprisonment in the penitentiary not less than three years and not exceeding ten years; or if by reason of any such act done as aforesaid, with the intent aforesaid, any person is killed, or the life of any person is lost, every such person so offending shall be deemed guilty of murder.

TITLE. VI.

Forgery and Counterfeiting.

SEC. 54. Every person who shall falsely make, alter, forge or counterfeit any record or other authentic matter of <sup>Forgery and
counterfeiting.</sup> a public nature, or any charter, letters-patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond covenant, United States treasury note or United States bond, bank bill or note, post note, check or draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for property or money, power of attorney, any auditor's warrant for the payment of money at the treasury, county order or any accountable receipt, or any order or warrant or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing

or acquittance, release or receipt for money or goods, or any acquittance, release or discharge for any debt, account, action, suit, demand, or other thing real or personal, or any transfer or assurance of money, moneys, stock, goods, chattels or other property whatever; or any letter of attorney or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements or other estate real or personal; or any acceptance or indorsement of any bill of exchange, promissory note, draft or order, or assignment of any bond, writing obligatory, or promissory note for money or other property; or shall counterfeit or forge the seal or handwriting of another, with intent to damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in or belong to this territory or not; or shall utter, publish, pass or attempt to pass as true and genuine, or cause to be uttered, published, passed, or attempt to be passed, as true and genuine, any of the above named false, altered, forged or counterfeited matters as above specified and described, knowing the same to be false, altered, forged or counterfeited matters as above specified and described, [knowing the same to be false, altered, forged or counterfeited,] with intent to prejudice, damage or defraud any person or persons, body politic or corporate, whether the said person or persons, body politic or corporate, reside in this territory or not; every person so offending shall be deemed guilty of forgery, and upon conviction thereof shall

Punishment. be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

Counterfeiting
gold and silver
coins.

SEC. 55. Every person who shall counterfeit any of the species of gold or silver coin now current, or that shall hereafter be current in this territory, or shall pass or give in payment, or offer to pass or give in payment, such counterfeit coin, or permit, cause or procure the same to be uttered or passed, with intent to defraud any person, body politic or corporate, knowing the same to be counter-

feited, shall be deemed guilty of counterfeiting, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

SEC. 56. Every person who shall have in his or her possession, or receive for any other person, any counterfeit gold or silver coin or coins of the species now current or hereafter to be current in this territory, with intent to utter or pass the same, or to permit, cause or procure the same to be uttered or passed, with intent to defraud any person or persons, body politic or corporate, knowing the same to be counterfeit, and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

Receiving counterfeit coin.

SEC. 57. Every person who shall have in his or her possession, or shall receive from any other person, any forged promissory note or notes, treasury notes, bond or bank bill or bills, for the payment of money with intent to utter or pass the same, or permit, cause or procure the same to be uttered or passed, with intent to defraud any person or persons, body politic or corporate, whether such person or persons, body politic or corporate, reside in or belong to this territory or not, knowing the same to be forged or counterfeited; or shall have or keep in his or her possession any blank or unfinished note, treasury note, bond or blank bill, made in the form or similitude of any promissory note, treasury note, bond, draft, receipt or bill, for the payment of money, made to be issued by any incorporated bank or banking company in this territory or elsewhere, or by the government of the United States, with intent to fill up and complete such blank and unfinished note, treasury note, bond, draft, receipt or bill, or to permit or cause or procure the same to be filled up and completed, in order to utter or pass the same, or to permit or cause or procure the same to be uttered or passed to defraud any person or persons, body politic or corporate, whether in this territory or elsewhere, shall, upon conviction

Receiving forged notes.

Punishment. thereof, be punished by confinement in the penitentiary for a term not less than one year, nor more than fourteen years.

Counterfeiting gold dust. SEC. 58. Every person who shall have in his possession, or receive for any other person, any counterfeit gold or silver coin, or any counterfeit uncoined gold in bars or otherwise, or any counterfeit gold dust, now current, or that shall hereafter be current in this territory by law or usage, with intent to utter or pass the same, or permit, cause or procure the same to be uttered or passed with intent to defraud any person, body politic or corporate, knowing the same to be counterfeit, shall, upon conviction thereof, be punished by imprisonment in the penitentiary for a term not less than one year, and not more than fourteen years.

Debasing gold or other metals. SEC. 59. Every person who shall mingle or procure to be mingled with any uncoined gold or gold dust now current, or which shall hereafter be current in this territory, any counterfeit gold dust or counterfeit uncoined gold, or any base metal or substance whatever, with intent to utter or pass the same, or procure the same to be uttered or passed as gold dust or uncoined gold, shall, on conviction thereof, be punished by a fine not to exceed one thousand dollars, or by confinement in the penitentiary for a term not less than one year, nor more than fourteen years.

Impairing value of coin. SEC. 60. Every person who, with intent to defraud, shall impair falsely, clip, scale, lighten or diminish any gold or silver coin now current, or that shall hereafter be by law or usage in this territory, shall be deemed guilty of forgery, and upon conviction thereof, shall be punished [by confinement] in the penitentiary for a term not less than one year nor more than fourteen years.

Passing fictitious bill, note or check. SEC. 61. Every person who shall make, pass, utter or publish with intent to defraud any person or persons, body-politic or corporate, either in this territory or elsewhere, or with like intent, shall attempt to pass, utter or publish, or shall have in his or her possession, with like intent to pass, utter or publish any fictitious bill, note or check, purporting to be the bill, note or check, or other instrument of writing,

for the payment of money or property of some bank, corporation, co-partnership or individual, when, in fact, there shall be no such bank, corporation, co-partnership or individual in existence, the said person knowing the bill, note, check or instrument of writing, for the payment of money or property, to be fictitious, shall be deemed guilty of the crime of forgery, and on conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

SEC. 62. Every person who shall make or knowingly have in his possession any die or dies, plate or plates, or any apparatus, paper, metal, machine or other thing whatever made use of in counterfeiting the coin now current, or hereafter to be current in this territory, or in counterfeiting bank notes, treasury notes, bonds or bills, whether such bank be situate in this territory or not, upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years; and all such dies, plates, apparatus, paper, metal or machines, intended for the purposes aforesaid, shall be destroyed.

Making apparatus for counterfeiting.

SEC. 63. On the trial of any person for forging any bill or note purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession with intent to pass any such forged bill or note, it shall not be necessary to prove the incorporation of any such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

Proof of incorporation.

SEC. 64. Any person of skill may be a witness to prove that such bill or note is forged or counterfeited.

Witness.

SEC. 65. Every person who shall fraudulently forge, deface, corrupt or counterfeit the seal of this territory, or the seal of any court or public officer, by law entitled to have and use a seal, and shall make use of the same, or shall forge or counterfeit the signature of any public officer,

Counterfeiting territorial seal.

or shall unlawfully and corruptly, or with evil intent, affix any of the said true seals to any commission, deed, warrant, pardon, certificate or other writing, or who shall have in his possession or custody, any such counterfeit seal, and shall willfully conceal the same knowing it to be falsely made and counterfeited, and shall thereof be convicted, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

TITLE VII.

Crimes and Offenses against Public Justice.

Perjury.

SEC. 66. Every person having taken a lawful oath or made affirmation in any judicial proceeding, or in any other matter where by law, an oath or affirmation is required, who shall swear or affirm willfully, corruptly and falsely in a matter material to the issue or point in question, or shall suborn any other person to swear or affirm as aforesaid, shall be deemed guilty of perjury, or subornation of perjury, as the case may be, and upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years.

Subornation of perjury.

Punishment.

Perjured witness, when guilty of murder.

SEC. 67. Every person who by willful and corrupt perjury or subornation of perjury, shall procure the conviction and execution of any innocent person, shall be deemed and adjudged guilty of murder, and upon conviction thereof shall suffer the punishment of death.

Indictment.

SEC. 68. In every indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the defense charged upon the defendant, and before what court or authority the oath or affirmation was taken, averring such court or authority to have had full power to administer the same, together with the proper averment or averments to falsify the matter or matters wherein the perjury is assigned, without setting forth any part of the records or proceedings either in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court, or other authority before whom the

perjury was committed or the form of the oath or affirmation, or the manner of administering the same.

SEC. 69. If any person or persons shall directly or indirectly give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present, reward or any other thing to obtain or procure the opinion, judgment or decree of any judge or justice of the peace acting within this territory, or to corrupt, induce or influence such judge or justice of the peace, to be more favorable to one side than to the other in any suit, matter or cause depending or to be brought before him or them, or shall directly or indirectly give any sum or sums of money, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present or reward or other thing to obtain, procure or influence the vote of any member of the legislative assembly, or to incline, induce or influence any such member of the legislative assembly to be more favorable to one side than to the other, on any question, election, matter or thing pending or to be brought before the legislative assembly, or either house thereof, the person so giving any money, bribe, present or reward, promise, contract, obligation or security, with intent and for the purpose aforesaid, and the judge, justice of the peace, or member of the legislative assembly, who shall in any wise accept or receive the same, shall be deemed guilty of bribery, and on conviction thereof shall be punished by confinement in the penitentiary for a term not less than one year nor more than five years.

Attempt to corrupt judge or justice of the peace.

Judicial officer, when guilty of bribery.

SEC. 70. If any person shall directly or indirectly give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation or security for the payment of any money, present or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general or prosecuting attorney, member of the legislative assembly or other officer, ministerial or judicial, (except such

Attempt to bribe other officers.

fees as are allowed by law,) with intent to induce or influence such officer to appoint any person to office, or to execute any of the powers in him vested, or perform any duty of him required, with partiality or favor, or otherwise than is required by law, or in consideration that such officer hath appointed any person to any office, or exercised any power in him vested, or performed any duty of him required, with partiality or favor or otherwise contrary to law, the person so giving and the officer so receiving any money, bribe, present, reward, promise, contract, obligation or security, with intent, or for the purpose or consideration aforesaid, shall be deemed guilty of bribery, and on conviction, shall be punished by confinement in the penitentiary for a term not less than one year, nor more than five years.

Punishment.

**Attempting to
bribe members of
assembly.**

SEC. 71. Every person who shall offer or attempt to bribe any member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general, county or prosecuting attorney, or other ministerial or judicial officer, in any of the cases mentioned in either of the two preceding sections, and every member of the legislative assembly, judge, justice of the peace, sheriff, coroner, clerk, constable, jailor, attorney general, county or prosecuting attorney, or other ministerial or judicial officer who shall propose or agree to receive a bribe in any of the cases mentioned in either of the two preceding sections, shall, on conviction, be fined in the sum not exceeding one thousand dollars.

**Agreement to
receive bribe.**

**Embezzlement
by public officer.**

SEC. 72. If any judge, justice of peace, sheriff, coroner, clerk, recorder or other public officer, or any person whatsoever, shall steal, embezzle, alter, corrupt, withdraw, falsify or avoid any record, process, charter, gift, grant, conveyance, bond or contract, or shall knowingly and willfully take off, discharge, or conceal any issue, forfeited recognizance or other forfeiture, or shall forge, deface or falsify any document or instrument recorded, or any registry, acknowledgment or certificate, or shall alter, deface or falsify any minute, document, book or any proceeding whatever of or

belonging to any public office within this territory, the person so offending and being thereof duly convicted, shall be punished by confinement in the penitentiary for a term not less than one year nor more than seven years.

SEC. 73. Every jailor who shall be guilty of willful inhumanity or oppression to any prisoner under his care or custody, shall be fined in any sum not exceeding five hundred dollars, and be removed from office. Inhumanity to prisoners.

SEC. 74. If any officer whose office shall be abolished by law, or who after the expiration of the time for which he may be appointed or elected, or after he shall have resigned or been legally removed from his office, shall willfully and unlawfully withhold or detain from his successor or other person entitled thereto by law, the records, papers, documents or other writing appertaining or belonging to his office, or mutilate, destroy or take away the same, the person so offending, shall on conviction be punished by [a] fine not exceeding one thousand dollars. The provisions of this section shall apply to any person or persons who shall have records, documents, papers or other writings in his, her or their possession, and who shall willfully mutilate, destroy, withhold or detain the same as aforesaid. Unlawful retention of office.
Mutilation of records.

SEC. 75. If any person shall without due authority so to do, acknowledge or confess, or procure to be acknowledged or confessed, any fine, common recovery, deed, bond, power of attorney, mortgage, recognizance, bail or judgment, in the name of any other person, by personating any such other person, the person so offending, on conviction thereof, shall be punished by confinement in the penitentiary for any term not less than one year nor more than ten years. Unauthorized acknowledgment of deed.

SEC. 76. If any person shall knowingly and willfully obstruct, resist or oppose any sheriff, deputy sheriff, coroner, constable or other officer of this territory, or other person duly authorized in serving or attempting to serve any lawful process or order of any court, judge or justice of the peace, or any other legal process whatsoever, or shall assault or beat any sheriff, deputy sheriff, coroner, constable or other Resisting officer

Provided,

officer, or person duly authorized in serving or executing, or attempting to serve or execute any process or order as aforesaid, or for having served or executed or attempted to serve or execute the same, any person so offending shall be fined in a sum not exceeding five hundred dollars, and be imprisoned for a term not exceeding one year: *Provided*, Any officer or person whatever, that may or shall assault or beat any individual under color of his commission or authority, without lawful necessity so to do, shall, on conviction, suffer the same punishment.

Resistance of
law. Vietnamis.

SEC. 77. If any person or persons shall in anywise aid, assist, engage in, co-operate or participate with any armed force of men, with intent, by force of arms, to obstruct, retard or resist the execution of any law of this territory, or shall, with such armed force, invade any portion of this territory, any such person or persons so offending shall, on conviction, be fined in any sum not exceeding one thousand dollars, or imprisoned for a term not exceeding ten years.

Obstruction of
messenger.

SEC. 78. If any person or persons shall willfully and knowingly intercept, obstruct or oppose any messenger traveling in any part of this territory, and carrying orders or dispatches from the executive department of this territory, or shall in any manner oppose, resist, or in any manner obstruct any officers of the United States or of this territory, or any person or persons acting under the authority or by the direction of such officers while engaged in the discharge of any official duty, or shall, when called upon by any such officer, refuse or neglect to aid or assist such officer in arresting any person or persons, any such person or persons so offending, shall, on conviction, be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding two years, or by both such fine and imprisonment.

Rescue.

SEC. 79. If any person or persons shall set at liberty, or rescue any person, who shall have been found guilty or convicted of a crime, the punishment of which is death, such

person, on conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than fourteen years; and if any person or persons shall set at liberty or rescue any person who shall have been found guilty or convicted of a crime, the punishment of which is confinement in the penitentiary, whether such person be in custody of an officer or in the penitentiary, the person so offending, on conviction thereof, shall be sentenced to the same punishment that would have been inflicted on the person so set at liberty or rescued.

Punishment.

SEC. 80. If any person shall set at liberty or rescue any person who, before conviction, stands charged or committed for any capital offense, or any crime punishable by confinement in the penitentiary, such person so offending, shall be, on conviction, fined in a sum not exceeding one thousand dollars and imprisoned in the penitentiary for a term not exceeding three years; and if the person rescued or set at liberty stands charged, committed or convicted of any misdemeanor or other offense punishable by fine or imprisonment, or both, the person convicted of such rescue or setting at liberty, shall suffer the same punishment that would have been inflicted on the person rescued or set at liberty if he or she had been found guilty.

Rescue before conviction.

SEC. 81. If the warden of the penitentiary or any servant, officer or agent belonging to or in employment at the same, or any sheriff, deputy sheriff or jailor, or any person employed by them as a guard, shall fraudulently contrive, procure aid, connive at, or otherwise voluntarily suffer the escape of any convict in custody, or in said penitentiary committed, every such person, on conviction, shall be punished by confinement in said penitentiary for a term not less than one year, nor more than two years.

Penitentiary officers procuring escape of convict.

SEC. 82. If the wardens of the penitentiary or other persons as aforesaid, shall negligently suffer any convict committed or in custody as aforesaid, under sentence of solitary imprisonment, to be at large without the cell or apartment assigned to said convict, or to be there

Negligence of prison officials.

visited, conversed with, comforted or relieved, contrary to the rules and regulations of the penitentiary, or shall negligently suffer such convict, or any other convict committed to the penitentiary under sentence of confinement to hard labor, to be at large without the precincts of the penitentiary, or contrary to the rules and regulations, thereof to be out of close confinement, the warden or other person neglecting his duty in the premises, being thereof duly convicted, shall be punished by a fine not exceeding two hundred dollars.

Assisting prisoner to escape.

SEC. 83. If any person shall convey to any convict in custody, or committed to the penitentiary, into the penitentiary or other place where such convict may be confined, any tool, weapon or other aid, with intent to enable such convict to escape such custody or confinement, whether such escape be effected or not, every person so offending, on conviction thereof shall be punished by a fine not exceeding five hundred dollars, and imprisonment in the penitentiary not exceeding six months.

Persons rescuing to be fined.

SEC. 84. If any person or persons shall rescue another in legal custody on civil process, such person or persons shall on conviction, be fined in any sum not exceeding the sum for which said civil process issued.

Persons rescuing instruments to be fined.

SEC. 85. If any person shall aid or assist a prisoner, lawfully committed or detained in any jail for any offense against this territory, or who shall be lawfully confined by virtue of any civil process, to make his or her escape from the jail, though no escape be actually made or if any person shall convey or cause to be delivered to any such prisoner any disguise, instruments or arms proper to facilitate the escape of such prisoner, any person so offending (although no escape or attempt to escape be actually made) shall on conviction be punished by a fine not exceeding five hundred dollars, and imprisoned in the county jail for a term not exceeding one year.

Fine and imprisonment.

SEC. 86. If any person shall aid or assist any prisoner to attempt to escape, or shall rescue, or shall attempt to rescue

any prisoner from the custody of any sheriff, deputy sheriff, coroner, constable, officer or other person who shall have the lawful custody of such prisoner; every person so offending shall, on conviction thereof, be fined not exceeding one thousand dollars, and imprisoned in the county jail not exceeding one year.

SEC. 87. If any sheriff, coroner, jailor, keeper of a prison, constable or other officer or person whatever, having Officer suffering prisoner to escape any prisoner in his legal custody, before conviction, shall voluntarily suffer or permit such prisoner to escape or go at large, every such officer or person so offending, shall, on conviction thereof, be fined in any sum not exceeding one thousand dollars, and be imprisoned in the county jail for any term not exceeding six months; *Provided*, That if such Provide. prisoner be in custody charged with murder or other capital offense, then such officer or person suffering or permitting such escape, shall be punished by confinement in the penitentiary for any term not less than one year, nor more than ten years. A negligent escape of a person charged with a criminal offense, before conviction, from the custody of any of the aforesaid officers, shall be deemed a misdemeanor, and punished by fine not exceeding five hundred dollars.

SEC. 88. If any sheriff, coroner, keeper of a jail, constable or other officer, shall willfully refuse to receive or Refusal to receive prisoner. arrest any person charged with a criminal offense, then such sheriff, coroner, jailor, constable or other officer, shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding six months in the county jail.

SEC. 89. If any person shall take money, goods, chattels, lands or other reward or promise thereof to Compounding offense. compound any criminal offense, such person or persons shall be fined in double the sum or value of the thing agreed for or taken, but no person shall be debarred from taking his goods or property from the thief or felon, or receiving compensation for the private injury occasioned by the commission of any such criminal offense.

SEC. 90. If any two or more persons shall conspire or

Malicious procuring of indictment.

agree falsely and maliciously, to charge or indict, or cause or procure to be charged or indicted, any person for any criminal offense, each of the persons so offending, shall, on conviction, be fined in any sum not exceeding one thousand dollars, and imprisoned not exceeding one year.

Unlawful exercise of office.

SEC. 91. If any person shall take upon himself to exercise or officiate [in] any office or place of authority in this territory, without being lawfully authorized thereto, he shall, upon conviction, be fined in a sum not exceeding two hundred dollars.

Embracery.

SEC. 92. Embracery is an attempt to influence a juror or jurors, corruptly to one side, by threats or menaces, or by promises, persuasions, entreaties, money, entertainments and the like. Every embracer who shall procure any juror to take money, gain or profit, or shall corruptly influence any juror by persuasions, promises, entreaties, or by any other improper means, or shall threaten or menace any juror, shall be fined not exceeding five hundred dollars, and imprisoned in the penitentiary not exceeding one year. And any juror convicted of taking money, gain or profit, or corruptly being influenced as aforesaid, shall suffer the like punishment, and be forever disqualified to act as a juror. This section shall apply as well to the grand as petit jurors.

Stirring up strife.

SEC. 93. If any person or persons shall wickedly and willfully excite and stir up any suit or quarrel between the people of this territory, either at law or otherwise, with a view to promote a strife and contention, every such person so offending, shall be deemed to have committed the crime of common barratry, and upon conviction thereof, shall be fined in a sum not exceeding one hundred dollars, and if he be an attorney or counselor at law, he shall be suspended from the practice for any time not exceeding six months.

Officious intermeddling.

SEC. 94. If any person shall officiously intermeddle in any suit at common law or in chancery, that in nowise belongs to or concerns such person, by maintaining or assisting either party, with money, or otherwise, to prosecute or defend such suit, with a view to promote

litigation; every such person so offending shall be deemed to have committed the crime of maintenance, and upon conviction thereof, shall be fined and punished as in cases of common barratry; *Provided*, That it shall not be deemed maintenance for a man to maintain the suit of his kinsman, or servant, or poor neighbor out of charity.

SEC. 95. If any judge, justice of the peace, sheriff, coroner, constable, clerk or other officer of this territory, ministerial or judicial, shall willfully or corruptly receive or take any fee or reward to execute or do his duty as such officer, except such as is or shall be allowed by law, or if any such officer shall willfully or corruptly ask or demand as a condition precedent to the performance of his duty as such officer, any fee or reward, except such as shall be allowed by law; every such officer so offending shall be deemed guilty of extortion, and on conviction thereof, shall be fined in any sum not exceeding two hundred dollars.

Corruption in office.

SEC. 96. Every clerk, sheriff, coroner, constable, county commissioner, justice of the peace, recorder, county surveyor or attorney general, or prosecuting attorney, who shall be guilty of any palpable omission of duty, or who shall willfully and corruptly be guilty of oppression, malfeasance, or partiality in the discharge of his official duties, shall upon conviction thereof, be fined in a sum not exceeding two hundred dollars. And the court shall have power upon the recommendation of the jury, to add to the judgment of the court, that any officer so convicted shall be removed from office. The court shall have power whenever any clerk of the district court, or prosecuting attorney, shall be presented or indicted, to appoint for that occasion a prosecuting attorney, or clerk, as the case may require, who shall thereby be invested in relation to such presentment or indictment, with all the powers of clerk or prosecuting attorney. It shall be the duty of the court when judgment shall extend to removal from office, to cause immediate notice of such removal to be given to the proper department, in order that the vacancy thus occasioned may be filled.

Palpable omission of duty.

Threatening
letters.

SEC. 97. If any person shall knowingly send or deliver any letter or writing, threatening to accuse another of a crime or misdemeanor, or to expose or publish any of his infirmities or failings, with intent to extort money, goods, chattels, or other valuable things, or threatening to maim, wound, kill or murder, or to burn his or her house or other property, or to accuse another of a crime or misdemeanor, or expose or publish any of his or her infirmities or failings, though no money, goods, chattels or valuable things be demanded, such person so offending shall on conviction be fined in a sum not exceeding five hundred dollars and imprisoned not exceeding six months.

TITLE VIII.

Offenses against the public Peace.

Disturbing
peace in night
time.

SEC. 98. If any person at late or unusual hours of the night time, shall maliciously or willfully disturb the peace or quiet of any neighborhood or family by loud or unusual noises, or by tumultuous and offensive carriage, threatening, trading, quarrelling, challenging to fight, or fighting, any person convicted thereof, shall be fined in a sum not exceeding fifty dollars, or imprisoned in the county jail not exceeding two months.

Assembling to
disturb peace.

SEC. 99. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do, by a judge, justice of the peace, sheriff, coroner, constable or other public officer, such person so offending, shall on conviction be severally fined in any sum not exceeding fifty dollars, and imprisoned in the county jail not exceeding one month.

Fighting.

SEC. 100. If two or more persons shall, by agreement, fight in any public place, to the terror of the citizens of this territory, the persons so offending shall be deemed guilty of an affray.

Assembling for
unlawful purpose

SEC. 101. If two or more persons shall assemble together to do an unlawful act, and separate without doing

or advancing towards it, such persons shall be deemed guilty of an unlawful assemblage, and upon conviction thereof, be severally fined in a sum not exceeding fifty dollars, or imprisoned in the county jail not exceeding three months.

SEC. 102. If two or more persons shall meet to do an ^{Meeting to do unlawful act.} unlawful act upon a common cause of quarrel, and make advances towards it, they shall be guilty of a riot, and on conviction, shall be severally fined in a sum not exceeding seventy dollars, or imprisoned in the county jail not exceeding four months.

SEC. 103. If two or more persons actually do an ^{Unlawful act vi et armis.} unlawful act, with force or violence, against the person or property of another, with or without a common cause of quarrel, or even do a lawful act in a violent or tumultuous manner, the persons so offending shall be deemed guilty of a riot, and on conviction shall severally be fined not exceeding two hundred dollars, or imprisoned in the county jail not exceeding six months.

SEC. 104. If any judge, justice of the peace, sheriff, ^{Negligence of officers.} or other officer, bound to preserve the public peace shall have knowledge of an intention on the part of any two persons to fight with any deadly weapon or weapons, and such officer shall not use and exert his official authority to arrest the parties and prevent the duel, every such officer shall be fined not exceeding five hundred dollars.

SEC. 105. If any person or persons shall in any ^{Libel.} newspaper or handbill, written or printed, publish or proclaim any other person or persons as coward or cowards, or use any other opprobrious or abusive language for not accepting a challenge to fight a duel, such person or persons so offending, on conviction shall be fined in a sum not exceeding five hundred dollars, or imprisoned for a term not exceeding three months. The publisher or printer of any such newspaper, handbill or other publication, may be summoned as a witness, and shall be required to testify against the writer or writers of such handbill or publication, and

Proviso.

if any such printer or printers shall refuse to testify in relation to the premises, either before the grand or petit jury, he or they shall be deemed guilty of a flagrant contempt of the court, and may be punished by fine and imprisonment, or either; *Provided, however,* That the testimony given by such witness shall in no case be used in any prosecution against such witness.

Definition of libel.

SEC. 106. A libel is a malicious defamation, expressed either by printing or by signs, or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby to expose him or her to public hatred, contempt or ridicule. Every person whether writer or publisher, convicted of this offense, shall be fined in a sum not exceeding five hundred dollars or imprisoned in the penitentiary not exceeding one year. In all prosecutions for a libel, the truth thereof may be given in evidence in justification, except libels tending to blacken the memory of the dead, or expose the natural defects of the living.

TITLE IX.

Offenses against public morality, health and police.

Bigamy.

SEC. 107. Bigamy consists in the having of two wives or two husbands at one and the same time, knowing that the former husband or wife is still alive. If any person or persons within this territory, being married or who shall hereafter marry, do at any time marry any person or persons, the former husband or wife being alive, the person so offending, shall on conviction thereof, be punished by a fine not exceeding one thousand dollars, and imprisoned in the penitentiary not exceeding two years. It shall not be necessary to prove either of the said marriages by the register or certificate thereof, or other record evidence, but the same may be proved by such evidence as is admissible, to prove a marriage in other cases; and when such second marriage shall have taken place without this territory,

cohabitation in this territory, after such second marriage, shall be deemed proof of the commission of the crime of bigamy, and the trial in such cases may take place in the county where such cohabitation shall have occurred. Nothing herein contained shall extend to any person or persons whose husband or wife shall have been continually absent from such person or persons, for the space of five years together, prior to the second marriage, and he or she not Absence of five years. knowing such husband or wife to be living within that time. Also nothing herein contained shall extend to any person that is or shall be at the time of such second marriage divorced by lawful authority from the bonds of such former marriage, or to any person where the former marriage hath been by lawful authority, declared void.

SEC. 108. Any person who shall under promise of Seduction. marriage, seduce and have illicit connection with any unmarried woman of previous chaste character, shall be guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment in the territorial prison not exceeding three years; *Provided*, That the subsequent Provided. marriage of the parties may be pleaded in bar of a conviction.

SEC. 109. If any man or woman being unmarried, Bigamy. shall knowingly marry the husband or wife of another, such man or woman shall, on conviction, be fined not more than five hundred dollars, or imprisoned in the penitentiary not more than one year.

SEC. 110. Any man and woman who shall live together in an open state of adultery or fornication, or adultery and fornication, every such man and woman shall be indicted, Adultery. and on conviction thereof, shall be fined in any sum not exceeding two hundred dollars each, or imprisoned in the county jail not exceeding six months. This offense shall be Fornicati. sufficiently proved by circumstances which raise the presumption of cohabitation and unlawful intimacy; and for a second offense, such man or woman shall be severally punished twice as much as the former punishment; and for a third offense, treble, and thus increasing the punishment for each succeed-

ing offense; *Provided however*, That it shall be in the power of the party or parties offending, to prevent or suspend the prosecution, by their intermarriage, if such marriage can be legally solemnized, upon the payment of costs of such prosecution.

Incestuous
marriage.

SEC. 111. Marriage between parents and children including grand-parents and grand-children of every degree between brothers and sisters of the half as well as of the whole blood, and between uncles and nieces, aunts and nephews, and cousins in the first degree, are declared to be incestuous, and absolutely void. This section shall extend as well to illegitimate as legitimate children and relations.

Consanguinity.

SEC. 112. Persons within the degree of consanguinity, within which marriages are declared by the preceding section to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, or who shall lewdly and lasciviously cohabit with each other, shall be liable to indictment, and upon conviction, be punished by confinement in the penitentiary for a term not exceeding ten years.

Incest.

SEC. 113. If a father shall licentiously cohabit with his own daughter, the father shall on conviction, be punished by confinement in the penitentiary for a term not exceeding twenty years.

Lewdness.

SEC. 114. If any person shall be guilty of open lewdness, or other notorious act of public indecency, tending to debauch the public morals; or shall keep open any tippling or gaming house on the Sabbath day or night; or shall maintain or keep a lewd house or place for the practice of fornication; or shall keep a common, ill-governed and disorderly house, to the encouragement of idleness, gaming, drinking, fornication or other misbehavior, every such person shall, on conviction, be fined not exceeding one hundred dollars or imprisoned in the county jail not exceeding six months.

Obscene books.

SEC. 115. If any person shall hereafter bring or cause to be brought or imported into this territory, for sale, or

shall sell or offer to sell any obscene book, pamphlet or print, every such person shall on conviction, be fined in a sum not less than twenty-five dollars nor more than two hundred dollars.

SEC. 116. If any person shall, by any device or pretense, entice, or tempt and prevail upon, or cause any minor to engage with such person, or with any other person or persons, in any game whatsoever, for any sum of money or property of value, or shall make any bet or wager with such minor, or cause the same to be done upon the result of any game, every such person shall, on conviction thereof, be deemed guilty of a misdemeanor, and fined in any sum not less than one hundred and fifty dollars.

Prevailing up
on minors to gam-
ble.

SEC. 117. All fines collected upon any indictment, shall be paid the one half thereof to the person giving information of the offense, and the remainder shall be paid into the school fund of the county in which the offense was committed, and the person receiving the one half of such fine as informer, shall be deemed and held to be a competent witness upon the trial of such offender.

Qui tam.

SEC. 118. All contracts, promises, agreements, conveyances, secureties and notes made, given, granted, executed, drawn, or entered into, where the whole or any part of the consideration thereof shall be for any money, property, or other valuable thing won by any gaming, or by playing at cards, or any gambling device or game of chance, or by betting on the side or hands of any person gaming, or for the reimbursing or paying any money or property knowingly lent or advanced at the time and place of such play, to any person or persons so gaming or betting shall be utterly void and of no effect. No assignment of any bill, bond, note or other evidence of indebtedness, where the whole or any part of the consideration for such assignment shall arise out of any gaming transaction, shall in any manner off-set the defense of the person or persons making, entering into, executing or giving such instrument so assigned, or the remedies of any person interested therein.

Certain
tracts void.

SEC. 119. Every tavern keeper who shall suffer or permit any game or games prohibited, or intended to be prohibited by this act, to be played in his tavern, or any out-house appendant thereto, shall, on conviction, be fined not exceeding one hundred dollars, and shall forfeit his license, and shall not be again licensed as a tavern keeper for one year from such conviction.

Obstruction of roads. **SEC. 120.** If any person shall obstruct or injure, or cause or procure to be obstructed or injured, any public road or highway or common street or alley of any town or village, or any public bridge, or causeway, or public river, or stream, declared navigable by law, or shall continue such obstruction, so as to render the same inconvenient or dangerous to pass, or shall erect or establish any offensive trade, or manufacture or business, or continue the same after it has been erected or established, or shall in anywise pollute or obstruct any water course, lake, pond, marsh or common sewer, or continue such obstruction or pollution, so as to render the same offensive or unwholesome to the county, town, village or neighborhood thereof; every person so offending, shall upon conviction thereof, be fined not exceeding one hundred dollars; and every such nuisance may, by order of the district court before whom the conviction may take place, be removed and abated by the sheriff of the proper county.

Nuisance. **[SEC. 120.** If any person or persons, shall knowingly **Diseased meat.** sell any flesh of any diseased animal, or other unwholesome provisions, or any pernicious or adulterated drink or liquors; every person so offending, shall be fined not exceeding two hundred dollars.]

County scrip. **SEC. 121.** It shall not be lawful for any person acting as territorial treasurer, territorial auditor, or any other territorial officer holding office in this territory, or any county treasurer, clerk, collector, or any other county officer, holding office in this territory, either directly or indirectly, to buy or barter or trade for, sell or traffic in, any territorial or county scrip, county order, auditor's warrant or certificate of indebtedness, or other evidence of indebtedness of the

territory, or any county therein, and such officer violating the provisions of this section shall be liable to indictment, and upon conviction thereof, in any court of competent jurisdiction, shall be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not exceeding three months, or shall suffer both such fine and imprisonment on the discretion of the court. It shall be no defense to any indictment hereunder, that such warrant, order, scrip, certificate or other evidence hath not been countersigned and registered, or either of them prior to such offense; but this section shall not be construed to forbid the sale by any officer of any such warrant, order or scrip, issued to him for his personal services or otherwise.

SEC. 122. Any territorial or county treasurer, who, upon presentation of any auditor's warrant, territorial warrant, county order or like evidence of indebtedness, for payment, shall refuse payment thereof, there being then in such treasury sufficient funds appropriated by law, for the payment of such warrant, order or other like indebtedness, or where from by law, payment thereof ought to be made; and any county treasurer or collector of taxes, who upon presentation of any auditor's warrant, county order or other like certificate or evidence of indebtedness in payment of any taxes which may by law be paid therein, shall refuse to receive such order, warrant or certificate in payment of such taxes; every such officer so offending shall be liable to indictment, and upon conviction, shall be fined in any sum not exceeding five hundred dollars. This section shall extend to the deputies of every such treasurer and collector of taxes.

Officers refusing payment.

SEC. 123. If any person, number of persons or corporation in this territory, without special leave from the legislative assembly, shall emit or utter any bill of credit, make, sign, draw or indorse any bond, promissory note, or writing, bill of exchange or order, to be used as a general circulating medium, and in lieu of money or other currency, every such person or persons, or members of such corporation

Bills of credit

assenting to such proceedings, being thereof duly convicted, shall pay a fine not exceeding five hundred dollars or be imprisoned not exceeding one year.

Defacing laws
and notifications.

SEC. 124. If any person shall intentionally deface, obliterate, tear down or destroy, in whole or in part, any copy or transcript, or extract from or of any law of the United States or of this territory, or any proclamation, advertisement or notification set up at any place in this territory, by authority of the United States or of this territory, or by order of any court; such person on conviction, shall be fined in a sum not exceeding one hundred dollars nor less than ten dollars, or imprisoned in the county jail for a term not exceeding one month; *Provided*, That this section shall not extend to defacing, tearing down, obliterating or destroying any law, proclamation, publication, advertisement or notification, after the time for which the same was by law to remain set up shall have expired.

Vagrancy.

SEC. 125. Any person able to work and support himself in some honest and respectable calling, not having wherewithal to maintain himself, who shall be found loitering, strolling about, frequenting of public places where liquor is sold, begging or leading an idle, immoral or profligate course of life, shall be liable to be indicted, or on the complaint, under oath, of any resident citizen of the county, arrested and carried before any justice of the peace, who shall examine said accused person, and hear the testimony in relation thereto, and if he shall be satisfied that he is a vagrant, as above set forth, the fact having been established by a jury, which shall in all cases be summoned and sworn to inquire the truth thereof, whether the person be a vagrant or not; such justice shall make out a warrant under his hand and seal, authorizing and requiring the officer having him in charge or custody to hire out such vagrant, within twenty-four hours, to the best bidder, by public outcry, or on notice given, as such justice may direct, for the highest price that can be had, for any term not exceeding four months; and such vagrant shall be subject to and governed by all the

provisions of the act regulating apprentices during the time for which he has been so hired. The money received for his hire shall, after deducting the costs, be, if he be without family, paid into the county treasury, but if he have a family, the same shall be appropriated for their benefit and use; *Provided*, That any such vagrant when arrested, and before judgment, may release himself by giving to said justice a bond with good security, conditioned that he will, for the next twelve months, be of good behavior and betake himself to some honest employment for support, and that he shall not, nor his family become a county charge, through or by reason of his idleness, immorality or profligacy.

Proviso.

SEC. 126. If any person shall be found having upon him or her any pick lock, crow key, bit or other instrument or tool, with intent feloniously to break and enter into any dwelling house, store, warehouse, shop or other building containing valuable property, or shall be found in any of the aforesaid buildings with intent to steal any goods and chattels, every such person so offending shall, on conviction, be deemed a vagrant, and punished by confinement in the penitentiary for a term not exceeding two years.

Burglars tools

SEC. 127. If any person or persons shall have upon him any pistol, gun, knife, dirk, bludgeon or other offensive weapon, with intent to assault any person, every such person, on conviction, shall be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months.

Offensive weapon.

SEC. 128. Every male person above eighteen years of age, who shall neglect or refuse to join the *posse comitatus*, or the power of the county, by neglecting or refusing to aid and assist in taking or arresting any person or persons, against whom there may have been issued any civil or criminal process, or by neglecting or refusing to aid and assist in retaking any person or persons, who, after having been arrested or confined, may have escaped from such arrest or imprisonment, or neglecting or refusing to aid and assist in preventing any breach of the peace, or commission of any

Posse comitatus.

criminal offense, being thereto lawfully required by any sheriff, coroner, constable, judge or justice of the peace, or other officer concerned in the administration of justice, shall, upon conviction, be fined in any sum not less than twenty dollars, nor more than two hundred dollars.

Resurrection
acts.

: Provide.

SEC. 129. If any person or persons shall open the grave or tomb, where the body or bodies of any person or persons shall have been deposited, and shall remove the body or bodies or remains of any deceased person or persons from the grave or place of sepulture, for the purpose of dissection, or any surgical or anatomical experiment, or for any other purpose, without the knowledge and consent of the near relations of the deceased, or shall in any way aid, assist, counsel or procure the same to be done, every such person or persons so offending, shall, on conviction, be fined not less than one hundred dollars, nor more than five hundred dollars; *Provided*, That this section shall not extend to the dissection of any criminal, where the same shall be directed to be delivered up for that purpose by competent authority; *And provided, also*, That this section shall not be construed to prevent any person from removing the body or bodies of their deceased relations or intimate friends to any other place of sepulture that he or she may think proper.

Illegal voting.

SEC. 130. If any person, being an elector, shall vote more than once at any election which may or shall be held by virtue of any law of this territory, or shall vote at any place or polls in and at which he is not a voter, he shall, on conviction thereof, be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not more than six months.

Corruptly influ-
encing electors.

SEC. 131. If any person shall, by bribery, menace, treating or other corrupt means or device whatsoever, either directly or indirectly, attempt to influence any elector of this territory in giving his vote at any election, every person so offending and being thereof convicted, shall be fined not exceeding five hundred dollars, and shall thereafter be

disqualified from voting at any election in this territory for five years.

SEC. 132. Any person who shall hereafter knowingly disturb the peace and good order of society by labor on the first day of the week, commonly called Sunday, (works of necessity and charity excepted) shall be fined, on conviction thereof, in any sum not exceeding fifty dollars. Disturbing the peace.

SEC. 133. Any person who shall, by menace, profane swearing, vulgar language, or any disorderly or immoral conduct, interrupt or disturb any congregation or collection of citizens, assembled together for the purpose of worshipping Almighty God, or who shall sell or attempt to sell or otherwise dispose of ardent spirits or liquors, or any articles which may tend to disturb any worshipping congregation or collection of people, within one mile of such place, unless the person so selling or disposing of said spirituous liquors or articles, shall be regularly licensed to keep a tavern or grocery, and shall sell the same at his said tavern or grocery, any person so offending shall be deemed guilty of a high misdemeanor, and upon conviction, shall be fined in any sum not exceeding one hundred dollars. Disturbing religious worship.

SEC. 134. Justices of the peace, respectively, in their several counties, shall have jurisdiction of the aforesaid offenses, mentioned in the last three sections of this chapter, and may, on view, or upon information on oath, cause every such person having offended as aforesaid, to be apprehended and brought before him to answer such charge. Jurisdiction of justices.

SEC. 135. Any person who shall be accused with either of the offenses specified in the four preceding sections, if he choose it, shall have the cause tried by a jury of six lawful jurors, and if he shall insist on a full jury, by twelve, who shall be summoned to try the cause; and if the jury shall find the accused guilty, they shall assess and state the amount of the fine, not more than in said sections specified, upon which the justice before whom the trial shall be had, or in case the person shall plead guilty, shall give judgment for fine and costs, and proceed to collect the same without Trial by jury.

delay; and when said fine shall be collected, the officer or person collecting the same shall be required to pay it over without delay to the treasurer of the proper county, taking his receipt therefor, which receipt shall be filed with the clerk of the county commissioner's court, after which the said fine or fines which may thus be deposited, shall be subject to the control of said court, and appropriated to the support of the common schools in the county where such conviction is had.

Judgments.

SEC. 136. The judgments rendered under the five preceding sections shall be subject to appeals as in cases of assault and battery and affrays, and shall be collected in the same manner.

TITLE X.

Offenses Committed by Cheats, Swindlers and other Persons.

Cheats and swindlers.

SEC. 137. Every person who shall be a party to any fraudulent conveyance of any lands, tenements, hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance had, made or contrived with intent to deceive and defraud others, or to defeat, hinder or delay creditors or others of their just debts, damages or demands, or who, being parties as aforesaid, at any time, shall wittingly and willingly put in use, avow, maintain, justify or defend the same, or any of them as true, and done, had or made in good faith, or upon good consideration, or shall sell, alien or assign any of the lands, tenements, hereditaments, goods, chattels or other things before mentioned to him, her or them, conveyed as aforesaid, or any part thereof; he, she or they so offending, shall, on conviction, be fined not exceeding one thousand dollars.

Fraudulent conveyance.

False representation.

SEC. 138. If any person, by false representations, in writing, of his own responsibility, wealth or mercantile correspondence and connection, shall obtain a credit thereby, defraud any person or persons of money, goods, chattels or any valuable thing, or if any person shall cause or procure

others to report falsely of his honesty, wealth or mercantile character, and by thus imposing on any person or persons, obtain credit, and thereby fraudulently get into possession of goods, wares, merchandise or any valuable thing, every such offender shall be deemed a swindler, and on conviction, shall be sentenced to return the property so fraudulently obtained, if it can be done, and shall be fined not exceeding one thousand dollars, and imprisoned in the county jail not exceeding six months.

SEC. 139. If any person or persons shall knowingly and designedly, by any false pretense or pretenses, obtain from any other person or persons, any chose in action, money, goods, wares, chattels, effects, or other valuable thing whatever, with intent to cheat or defraud any such person or persons of the same; every person so offending shall be deemed a cheat, and upon conviction, shall be fined in any sum not exceeding one thousand dollars, and imprisoned in the penitentiary not exceeding one year, and shall be sentenced to restore the property, so fraudulently obtained if it can be done. This section shall not apply to sales of property on a credit.

Obtaining goods
under false pre-
tenses.

SEC. 140. If any person shall knowingly have, keep, or use any false or fraudulent scales, or weights, for weighing gold, or gold dust, or any other article or commodity; every such person so offending, shall on conviction, be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months.

Fraudulent
weights.

SEC. 141. The owner, manager, or agent of any species of quartz mill, arastra mill, furnace or cupel, employed in extracting gold from quartz, pyrites or other minerals, who shall neglect or refuse to account for, or pay over and deliver all the proceeds thereof to the owner of such quartz, pyrites, or other minerals, excepting such portion of said proceeds as he is entitled to in return for his services, shall, on conviction, be fined in a sum not exceeding one thousand dollars, or be imprisoned in the penitentiary not exceeding one year.

Quartz mills.

SEC. 142. Any person or persons, who after once selling,

Fraudulent
agreements.

bartering or disposing of any tract or tracts of land, town lot or lots, or executing any bond or agreement for the sale of any lands, or town lot or lots, shall again, knowingly and fraudulently sell, barter or dispose of the same tract or tracts of land, or town lot or lots, or any parts thereof, or shall, knowingly and fraudulently execute any bond or agreement to sell or barter, or dispose of the same land, or lot or lots, or any part thereof, to any person or persons, for a valuable consideration; every such offender, upon conviction thereof, shall be punished by confinement in the penitentiary for a term not less than one year nor more than ten years.

False weights
and measures.

SEC. 143. If any person shall knowingly sell by false weights or measures, or shall knowingly use false measures at any mill, in taking toll for grinding corn, wheat, rye or other grain, he shall be deemed a common cheat, and on conviction, shall be fined not less than two hundred dollars, and be imprisoned in the county jail not exceeding three months.

Bona fide re-
ceipts.

SEC. 144. That no warehouseman, wharfinger or other person, shall issue any receipt, or other voucher for any goods, wares, merchandise, grain or other produce or commodity, to any person or persons purporting to be the owner or owners thereof, unless such goods, wares, merchandise or other produce or commodity, shall have been *bona fide*, received, into store by such warehouseman or wharfinger, or other person, and shall be in store and under his control at the time of issuing such receipt.

Vouchers.

SEC. 145. That no warehouseman, wharfinger, or other person, shall issue any receipt or other voucher upon any goods, wares, merchandise, grain or other produce, or commodity, to any person or persons, as security for any money loaned, or other indebtedness, unless such goods, wares, merchandise, grain or other produce or commodity, shall be at the time of issuing such receipt, the property of such warehouseman or wharfinger, or other person, and shall

be in store and under his control at the time of issuing such receipt or other voucher as aforesaid.

SEC. 146. That no warehouseman, wharfinger or other person, shall issue any second receipt for any goods, wares merchandise, grain or other produce or commodity, while any former receipt for any such goods or chattels as aforesaid, or any part thereof, shall be outstanding and uncanceled. Second receipts.

SEC. 147. That no warehouseman, wharfinger or other person shall sell or encumber, ship, transfer, or in any manner remove beyond his immediate control, any goods, wares, merchandise, grain or other produce or commodity, for which a receipt shall have been given as aforesaid, without the written assent of the person or persons holding such receipt. Written assent.

SEC. 148. Any warehouseman, wharfinger or other person, who shall violate any of the foregoing provisions, relating to warehousemen, shall be deemed a cheat, and be subject to indictment, and upon conviction, shall be fined in any sum not exceeding one thousand dollars, and imprisoned in the penitentiary of this territory not exceeding five years; and all and every person aggrieved may have and maintain an action on the case against the person or persons violating any of the foregoing provisions relating to warehousemen, to recover all damages, immediate or consequential, which he or they may have sustained by reason of such violation as aforesaid, before any court of competent jurisdiction, whether such person shall have been convicted as a cheat under the foregoing sections or not. Cheat.

SEC. 149. Every president, cashier, treasurer, secretary or other officer, and agent of any bank, railroad, manufacturing or other corporations, who shall willfully and designedly sign, with intent to issue, sell, pledge or cause to be issued, sold or pledged, any false, fraudulent or simulated certificate, or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation, or any instrument purporting to be a certificate, or other evidence of such ownership or transfer, for the signing, issuing, Fraudulent certificates.

selling or pledging of which such president, cashier, treasurer or other officer or agent, shall not be authorized by the charter and by-laws of such corporation, or by some amendment thereof, shall be adjudged guilty of felony; and any such person or persons shall be liable to indictment, and on conviction, shall be punished by fine not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine.

Fraudulent certificates of stock, &c.

SEC. 150. Every president, cashier, treasurer, secretary or other officer, and every agent, attorney, servant or employe of any bank, railroad, manufacturing or other corporation, and, every other person who shall knowingly and designedly, or with intent to defraud any person or persons, bank, railroad, manufacturing or other corporation, issue, sell, transfer, assign or pledge, or cause or procure to be issued, sold, transferred, assigned or pledged, any false, fraudulent, or simulated certificate, or other evidence of ownership, or of any share or shares, of the capital stock of any bank, railroad, manufacturing, or other corporation; every such person so issuing, selling, transferring, assigning, or pledging or causing the same to be done, shall be adjudged guilty of felony, and shall be liable to indictment, and on conviction, shall be punished by a fine not exceeding two thousand dollars, and by imprisonment in the penitentiary not more than ten years as the jury may determine.

Public ranche.

[SEC. 150. If any person keeping a public ranche or stable, shall use or allow to be used, without the consent of the owner, any horse, ox, mule, or ass, that shall be left with him to be ranched, or fed, he shall forfeit to the owner, all ranche or stable fees that may be due upon such animal used, and the additional sum of five dollars, for each day such animal may have been used; to be collected in the same manner as other debts.]

TITLE XI.

Fraudulent and Malicious Mischief.

Malicious mischief.

SEC. 151. If any person shall willfully and maliciously cut down, break down, level, demolish, or otherwise destroy

or damage any bridge, embankment, mill dam, or ditch, being the property of another, or break or destroy the windows or doors of any dwelling house or other house, belonging to or occupied by another, or shall set fire to or burn, or destroy, or procure or cause to be burnt or destroyed, any barrack, cock, crib, rick or stack of hay, corn, wheat, oats, barley, or other grain of any kind, being the property of another, or shall cut down, girdle, or destroy any fruit or shade tree, standing or growing upon the premises of another, or cut, pull down, or destroy any gate, post, railing or fence; pull down, burn or destroy any pile or piles of wood, boards, or plank, or other lumber, being the property of another, or shall for malice or mischief, overturn any cart, wagon or other carriage, or run them into sloughs, holes, or other places, or shall cut loose or set adrift any canoe, ferry, flat, skiff, boat, or other vessel for mischief, or shall unlawfully, wantonly, willfully, maliciously, kill, wound, disfigure or destroy any horse, mare, filley, colt or gelding, or any bull, ox, steer, bullock, cow, heifer, or calf, or any sheep or lamb, or any hog, pig or dog, or any other useful animal, being the property of another; every person so offending, on conviction, shall be fined not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding three months, or both.

SEC. 152. If any person shall willfully and intentionally break down, pull down, or otherwise destroy or injure, in whole, or in part, any public jail, or other place of confinement; every person so offending, shall upon conviction, be fined in any sum not exceeding five thousand dollars, nor less than the value of such jail or place of confinement so destroyed, or of such injury as may have been done thereto by such unlawful act. Destruction of
jails.

SEC. 153. Whenever the punishment for any crime or misdemeanor is discretionary, as to the amount or extent, the court may determine and [af]fix the same, whether the punishment consists of imprisonment or fine. Discretionary
punishment.

SEC. 154. All fines imposed by virtue of any of the laws of this territory for the punishment of crimes and

Proviso.

misdemeanors, where no other provisions are made, shall when collected, be paid into the treasury of the county where the offense shall be tried, for the use of such county; *Provided*, That nothing in this section contained, shall be so construed as to found or constitute a cause of challenge or objection to any grand or petit juror.

Power of courts.

SEC. 155. Any court shall have power in all cases of conviction when any fine is inflicted, to order as part of the judgment of the court, that the offender shall be committed to jail, there to remain until the fine and costs are fully paid, or otherwise legally discharged.

Approved, December 10th, 1869.

COUNTY OFFICES.

CHAPTER 4.

AN ACT CREATING THE SEVERAL COUNTY OFFICES AND DEFINING THE DUTIES THEREOF.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

ARTICLE I.

County Commissioners.

Power.

SEC. 1. Each organized county within the territory, shall be a body corporate and politic, and as such shall be empowered for the following purposes:

First, To sue and be sued.

Second, To purchase and hold real and personal estate for the use of the county and land sold for taxes as provided by law.

Third, To sell and convey any real or personal estate owned by the county, and make such order respecting the

same as may be deemed conducive to the interests of the inhabitants.

Fourth, To make all contracts and do all other acts in relation to the property and concerns of the county, necessary to the exercise of its corporate or administrative powers.

Fifth, To exercise such other and further powers as may be especially conferred by law.

SEC. 2. Any real or personal estate, heretofore conveyed, or which may be hereafter conveyed to any county, shall be deemed the property of such county. Conveyances.

SEC. 3. The powers of a county as a body politic and corporate, shall be exercised by a board of county commissioners. County commissioners.

SEC. 4. Each county organized for judicial purposes shall, at its own expense, provide a suitable court house and a sufficient jail and other necessary county buildings, and keep them in repair. Court house.
Jail.

SEC. 5. In all suits or proceedings by or against a county, the name in which the county shall sue or be sued, shall be the "board of the county commissioners of the county of _____," but this provision shall not prevent county officers, when authorized by law, from suing in their name of office for the benefit of the county. Suits, how titled.

SEC. 6. In all legal proceedings against the county, process shall be served on said board of county commissioners or any member thereof, and they shall have the right and are authorized in the absence of the county attorney, to employ an attorney to prosecute or defend, for which they may make an appropriation out of the general county fund. Service of process.

SEC. 7. When a judgment shall be rendered against the board of county commissioners of any county, or against any county officer, in an action prosecuted by or against him or them in his or their name of office, where the same shall be payable by the county, no execution shall issue upon said judgment, but said judgment shall be paid by a tax levied and collected for that purpose as in the case of other county charges, and when so collected shall be paid by the county. Judgment, how paid.

Proviso.

treasurer to the person to whom the same shall be adjudged, upon the delivery of a proper voucher therefor; *Provided*, That execution may issue on said judgment if payment be not made within sixty days after the time required for the payment of county taxes to the county treasurer by the proper officers of said county in each year.

Board, how
formed.

SEC. 8. The board of county commissioners shall consist of three qualified electors, and who shall hold their offices for two years and until their successors are appointed or elected and qualified according to law, and each person elected as such commissioner, shall, on receiving a certificate of his election, take an oath to support the constitution of the United States and the organic act of this territory, and to perform the duties of his office to the best of his ability, which oath being indorsed upon said certificate under the hand of the proper officer administering it, shall be filed by the judge of probate, and each of said commissioners shall also give bond to the people of the territory of Wyoming in the sum of one thousand dollars, and upon the same being approved and filed by the judge of probate, they or any two of them having filed the requirements of this section, shall be qualified to act as such commissioners, any two of whom shall be competent to transact business.

Place and time
of meeting.

SEC. 9. The board of county commissioners of each county shall meet at the county seat of their respective counties on the first Monday in January, May, July and October in each year, and at such other times as in the opinion of the board the public interest may require, or that may be required by any existing provisions of law. Such commissioners may sit four days or longer at each regular session, and two days at each special or called session, but shall not receive any compensation for any length of time over four days at regular sessions.

Per diem.

SEC. 10. Each member of the board of county commissioners shall be paid by the county, a compensation for his services and expenses in attending the meetings of said board as provided in the preceding section, at the rate of five dollars per day for the time he shall actually attend as shall

appear on the minutes of the proceedings of said board and including the time necessary in going to and returning from the same. They shall also be entitled to fifteen cents per mile for the distance actually traveled in going to and returning from the county seat.

SEC. 11. The board of county commissioners of each county shall have power at any meeting:

Powers of commissioners.

First, To make such orders concerning the property belonging to the county as they may deem expedient.

Second, To examine and settle all accounts of the receipts and expenses of the county, and to examine, settle and allow all accounts chargeable against the county, and when so settled and allowed, they may issue county orders therefor as provided by law.

Third, To build and keep in repair county buildings, and if thought advisable, to cause the same to be insured in the name of the county treasurer, for the benefit of the county, and in case there are no county buildings, to provide suitable rooms for county purposes.

Fourth, To apportion and order the levying of taxes as provided by law.

Fifth, To represent the county and have the care of the county property and the management of the business and concerns of the county, in all cases where no other provision is made by law.

Sixth, To establish election precincts at such places in the county as the convenience of the inhabitants may require.

Seventh, To lay out, alter or discontinue any road running through the county, and also to perform such other duties respecting roads as may be required by law.

Eighth, To grant licenses for keeping ferries, toll bridges and toll gates as may be prescribed by law.

Ninth, To perform such other duties as are or may be prescribed by law.

SEC. 12. Every board of county commissioners shall have a seal or scroll, until a seal can be procured, and may alter the same at pleasure; they shall sit with open doors, and all persons conducting themselves in an orderly manner

Seal.

may attend their meetings, and they may establish rules and regulations to govern the transactions of their business.

Presiding officer.

SEC. 13. They shall, at the first meeting after their election, or appointment, choose one of their number chairman, who shall preside at all meetings when present, and in case of his absence either one of the other members may act as temporary chairman.

Oaths.

SEC. 14. The chairman of said board shall have power to administer oaths to any person concerning any matter submitted to the board or connected with their powers and duties, and he shall sign all county orders.

Accounts.

SEC. 15. No account shall be allowed by the board of county commissioners unless the same shall be made out in separate items and the nature of each item stated, and where no specified fees are allowed by law, the time actually and necessarily devoted to the performance of any service charged in such account, shall be specified, which account so made out shall be verified by affidavit setting forth that said account is just and correct, and that the whole or no part of the same has been paid by the county or by any individual: *Provided*, That nothing in this section shall be construed to prevent any such board from disallowing any account, in whole or in part, when so rendered and verified, nor from requiring any other or further evidence of the truth and propriety thereof as they may think proper.

Proviso.

Attestation of county orders.

SEC. 16. County orders shall be signed by the chairman and attested by the clerk under the seal of the county, and shall specify the nature of the claim or service for which they were issued.

Claims.

SEC. 17. When any claim of any person against a county shall be disallowed in whole or in part by the board of commissioners, such person may appeal from the decision of such board to the district court for the same county, by causing a written notice of such appeal to be served on the clerk and chairman of such board within ten days after making such decision, and by executing a bond to such county with sufficient security to be approved by the clerk of said board, conditioned for the faithful prosecution of such appeal, and

the payment of all costs that shall be adjudged against the appellant.

Appeals.

SEC. 18. The clerk of the board, upon such appeal being perfected as above required, shall immediately give notice thereof to the county attorney, if there be one, and shall make out a brief return of the proceedings in such case before the board, with their decision thereon properly certified, and shall file the same, together with the bond and all the papers in the case in his possession, with the clerk of the district court, and such appeal shall be entered, tried and determined the same as appeals from justice's courts, and costs shall be awarded in like manner.

Notice to county attorney.

SEC. 19. The board of commissioners of their respective counties shall, at the expense of the county, furnish annually and in due season to the assessor and collector of the county, suitable blank books and blanks necessary for their respective offices, and prepared in accordance with law, and shall also provide suitable books and stationery for the use of each of the county officers of their county, together with appropriate cases and furniture for the safe and convenient keeping of all the books, documents and papers belonging to each of said officers, and also official seals for each of said officers, when the same are required by law.

Blank books.

Official seals.

SEC. 20. The board of commissioners of their respective counties, at their regular meetings, to be held in January and July in each year, shall cause to be prepared a statement of the receipts and expenditures of such county during the six months immediately preceding, setting forth the amount of money received, and for what it has been received, setting forth also the amount expended, and the particular objects for which in each case every sum of money has been expended, and such statement signed by the chairman and clerk of the board, shall be published at least three times in some newspaper printed in the county, or if there be none, by posting such statement in three public places in the county.

Statement of receipts.

Expenditures.

SEC. 21. If any commissioner shall refuse or neglect to perform any of the duties which are or shall be required of him by law as a member of the board of county com-

Neglect of duty.

Penalty. commissioners, without just cause therefor, he shall for each offense forfeit a sum not less than twenty-five dollars, nor more than one hundred dollars.

Vacancies. SEC. 22. Any vacancy occurring in the board of county commissioners of any county by reason of death, resignation, removal or otherwise, of one of such commissioners, the same shall be filled by the remainder of the board, and in case of a vacancy of two members of such board at the same time, the judge of probate shall appoint two discreet electors to fill said vacancies, and shall give such appointees certificates of appointment, and said commissioners shall take the oath and file bonds as required in section eight of this article.

Tenure of office. SEC. 23. Every person appointed county commissioner shall hold his office until the general election, and until his successor shall be qualified, and enter upon the duties of his office.

Appointment to fill vacancies. SEC. 24. In case of a vacancy in any county office, in any county in this territory, by reason of death, resignation, removal or otherwise, the county commissioners of said county shall have power to fill such vacancy by appointment, except in cases otherwise provided for by law, and the person or persons so appointed shall hold his or their office until an election can be held as provided by law, and until his or their successors shall be elected and qualified according to law.

ARTICLE II.

Judge of Probate.

Judge of probate ex officio justice and treasurer. SEC. 1. There shall be a judge of probate for each county, who shall hold his office for two years and until his successor is elected and qualified, and who shall be *ex officio* justice of the peace and county treasurer of his county, and who shall before he enters upon the duties of his office, take an oath to support the constitution of the United States and the organic act of the territory of Wyoming, and that he will perform the duties of his office as enjoined upon him by law, and shall also execute to said territory a bond in the penal sum of ten thousand dollars with two or more sufficient

sureties, to be approved by the board of county commissioners, conditioned for the faithful performance of the duties required of him by law as such judge of probate, *ex officio* justice of the peace and county treasurer, and for the faithful application and payment of all moneys and effects that may come into his hands in execution of the duties required of him by law, as such judge of probate and *ex officio* justice of the peace and treasurer.

SEC. 2. The judge of probate shall keep a record of all probate business done by or before him, in the manner and as provided by law, which record shall be open to the inspection of all persons, and shall perform the duties of his office as prescribed by law. He shall receive such fees for probate business as shall be allowed by law.

Records.

Fees-

SEC. 3. The judge of probate as *ex officio* justice of the peace, shall have the same civil and criminal jurisdiction as other justices of the peace, and be in all respects subject to the same requirements and penalties prescribed by law, and shall be allowed the same fees as justices of the peace.

Jurisdiction.

SEC. 4. The judge of probate as county treasurer, shall keep a just and true account of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office as such treasurer, and shall perform all duties required of him by any provisions of law of this territory.

Duties as treasurer.

SEC. 5. The judge of probate as county treasurer, shall receive all moneys belonging to the county and territory, from whatsoever source they may be derived, and all other moneys which may be directed by law to be paid to him. All moneys received by him for the use of the county, shall be paid out by him only on the orders or warrants issued by the board of county commissioners as prescribed by law, except where special provisions for the payment thereof shall be otherwise made by law.

Moneys, how disposed of.

SEC. 6. The said treasurer shall keep a just and true account of the receipts and expenditure of all moneys which shall come into his hands by virtue of his office, in a book or books to be kept by him for that purpose, which books shall

Accounts.

Receipts.

Expenditures.

be open at all times for the inspection of the board of county commissioners or any member thereof, and to all county and territorial officers, or any citizen desiring to inspect the same, and at the annual meeting on the first Monday in January of each year of the said board of county commissioners, or at such other time as they may direct, he shall settle with them his account as treasurer, for the preceding year, and for that purpose he shall exhibit to them all his books and accounts and all vouchers relating to the same, to be audited and allowed; he shall also make a report at each regular meeting of said commissioners of the amount of moneys received and expended by him as such treasurer during the intervening time, if so required.

Order of payment.

SEC. 7. County orders or warrants properly attested shall be entitled to a preference as to payment, according to date of presentation and acceptance at the treasurer's office, the oldest date to have the preference, but every county treasurer shall receive from the county collector in payment of county taxes, county orders issued in said county, unless restricted from so doing by some provision of law.

Resignation or removal.

SEC. 8. Upon the resignation or removal from office of any county treasurer, all the books and papers belonging to his office and all moneys in his hands by virtue of his office, shall be delivered to his successor in office, upon the oath of such preceding treasurer or in case of his death upon oath of his executors and administrators. If any such preceding treasurer, or in case of his death, if his executors or administrators shall neglect or refuse to deliver up such books, papers and moneys, on oath when lawfully demanded, every such person shall forfeit a sum of not less than one hundred dollars nor more than five hundred dollars, and be also liable upon his official bond for such refusal or neglect.

Neglect to deliver books.**Penalty.****Presentation of orders.**

SEC. 9. In all cases where county orders are drawn by the county clerk of any county in this territory, upon the treasurer of such county, and properly signed by the chairman of the board of county commissioners, the said orders before they are delivered to the person or persons for whose benefit the same are drawn, shall be severally presented by the said

clerk to the county treasurer, who shall personally countersign the same, and shall also enter in a book to be kept by him for that purpose, the date, amount and number of each of said orders, and the name or names of the person or persons in whose favor such orders are drawn respectively.

SEC. 10. No county treasurer shall countersign any county order before the same is filled up, nor until he shall be satisfied that the order presented to him so to be countersigned, was duly ordered to be drawn by said board of county commissioners.

Countersigning orders.

SEC. 11. Every county treasurer shall have and keep in his office a book to be called the register of county orders, wherein shall be entered and set down at the date of the presentation thereof, and without any interval or blank line between any such entry and the one preceding it: every county order or other certificate or evidence of county indebtedness at any time presented to such county treasurer for payment, whether the same is paid at the time of presentation or not, the date and number of such order, the amount for which the same is payable, the date of the presentation thereof, the name of the person to whom such order is by the terms thereof payable, and the name of the person presenting the same. Every such register of county orders shall, at all reasonable hours, be opened to the inspection and examination of any person desiring to inspect or examine the same.

County orders to be registered.

SEC. 12. Every county treasurer shall pay over to the territorial treasurer, all territorial taxes and other moneys received by him from the county collector on account of the territory, in the same kind of funds in which the same shall be received, and together with all such moneys, every county treasurer shall deliver to the treasurer of the territory a statement in writing that he has paid over the same funds in kind as received by him, and that he has not exchanged or bartered any of the moneys, coin, bank bills, treasury notes or other currency received by him on account of the territory for any auditor's warrants, territorial scrip or other certificates or evidences of indebtedness of the territory, nor caused nor

Territorial tax.

permitted the same to be done, and that all such territorial auditor's warrants or other certificates or evidences of indebtedness of the territory, so by him delivered to the treasurer, were received by him from the county collector in payment of territorial taxes or other moneys due the territory. Every such statement shall be sworn to before any person authorized to administer oaths, and by him filed and preserved in his office, and false swearing in such statement shall be deemed perjury.

Neglect of treasurer.

SEC. 13. Every county treasurer who shall fail, neglect or refuse to keep in his office such register of county orders as required by section eleven, or shall fail, neglect or refuse to enter therein at the time of the presentation thereof, every county order which may be presented to him for payment, or shall make any false entry thereof, or shall fail, neglect or refuse to pay any order presented to him for payment, there being then money in the treasury appropriated for that purpose, or from which by law the same ought to be paid; every such county treasurer so offending, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not less than fifty dollars and not more than five hundred dollars, and the court may adjudge that such treasurer be removed from his office. This section shall extend to the deputy of every such county treasurer.

Payment of receipts within thirty days.

SEC. 14. Every county clerk, clerk of the district court, district attorney, sheriff, constable, justice of the peace, or other territorial or county officer by law appointed, required or permitted to receive and pay over to the county treasurer any taxes, fines, fees or other moneys whatsoever, shall within thirty days after the receipt of such moneys, pay the same over to the county treasurer in the same kind of gold or silver coin, or in the same kind of United States treasury notes, bank bills, county warrants, county orders, county scrip, certificates of indebtedness or other evidences of indebtedness whatsoever, in which the same were by such officer received, and together therewith, such officer so paying over the same, shall deliver to such treasurer a

statement in writing of the amount of such moneys so collected by him and paid over as aforesaid, the kind of moneys or evidences of debt, whether gold coin, silver coin, United States bonds or treasury notes, bank bills, county orders, county scrip, auditor's warrants, territorial warrants, or other certificates or evidences of indebtedness of the territory or any county or any person or corporation in which the same and every part thereof were by him received, which statement shall be signed by the person paying the same, and sworn to before such treasurer, and by him filed and preserved in his office. Every person falsely swearing in any such statement shall be deemed guilty of perjury. The county treasurer shall not demand or receive any fee for administering the oath required by this section.

Statement.

SEC. 15. The county treasurer may appoint a deputy for whose official acts he shall be responsible, and who shall take the oath heretofore prescribed, with such changes as may be necessary, and who shall give bond to such treasurer for the faithful performance of all duties required of him, in such sum and manner as said treasurer may require, and such deputy shall hold his office during the pleasure of such treasurer.

Deputy treasurer.

ARTICLE III.

County Clerk.

SEC. 1. There shall be a county clerk for each county of this territory, who shall be elected or appointed for two years, and who shall be *ex officio* register of deeds. He shall, before he enters on the duties of his office, execute and file with the judge of probate, a bond with two or more sufficient sureties, in the penal sum of not less than four thousand dollars, to be approved by the board of county commissioners, conditioned that he will faithfully perform all the duties of his office as county clerk and *ex officio* register of deeds, and pay all moneys that may come into his hands by virtue of his office as required by law, and deliver to his successor in office all the books, records, papers and other things belonging to his said office. He

County clerk and register of deeds.

shall also take an oath to support the constitution of the United States, and the act organizing the territory of Wyoming, and that he will faithfully discharge the duties of county clerk and *ex officio* register of deeds as required by law, which said oath shall be indorsed upon the back of his certificate of election or appointment, and shall be filed with his bond.

Deputy clerks SEC. 2. Every such clerk may appoint a deputy in writing, under his hand, and said deputy shall act as such during the pleasure of said clerk, and he shall file such appointment with the necessary oath indorsed on the back of the same, with the judge of probate, and in case of the absence or disability of such clerk, said deputy shall perform the duties of such office, and may at all times sign the name of such clerk officially by himself as such deputy, when required so to do by any provision of law. Said clerk may require such deputy to enter into bonds to him to faithfully perform the several duties of his office, and such clerk and his securities on his official bond shall be responsible for all official acts performed by such deputy.

Duties of county clerks. SEC. 3. The county clerk shall keep his office at the county seat; he shall attend the sessions of the board of county commissioners, either in person or by deputy, keep the seals, records and papers of the said board of county commissioners, and keep a record of the proceedings of said board in a book as required by law. He shall also keep a book in which shall be entered all licenses except marriage licenses, giving the names of the persons to whom such licenses are issued, with the date, amount and for what the same was issued, he shall also keep a book of blank county orders or warrants, with a margin in proper blank, which blank margin shall be properly filled before any warrant shall be delivered, and no warrant shall be delivered by such clerk or his deputy until properly signed by the chairman of the board of county commissioners, attested by such clerk under the county seal, and be presented to the county treasurer to be countersigned.

SEC. 4. It shall be the general duty of the clerk of the board of county commissioners:

Duty of clerk
of board.

First, To record in a book to be provided for that purpose, all proceedings of the board.

Second, To make regular entries of all their resolutions, orders and decisions on all questions coming before them.

Third, To sign all orders issued by the board for the payment of money; and he shall preserve and file all accounts acted upon by the board with their action thereon, and he shall perform such special and other duties as may be required of him by law.

SEC. 5. It shall be the duty of such clerk to designate upon every account which shall be audited and allowed by the board, the amount so allowed, and he shall file such accounts as well as those not allowed, keeping the two separate; and such clerk shall not sign or issue any county order unless ordered by the board of commissioners authorizing the same, and every such order or warrant shall be numbered.

Accounts, war-
rants, &c.

SEC. 6. Such clerk shall receive a reasonable compensation for such services as he may perform as clerk of the board, where no specific fees are allowed therefor, the same to be allowed by the board and paid by the county.

Compensation.

SEC. 7. The county clerk as *ex officio* register of deeds, shall have custody of, and safely keep and preserve, all the books, records, deeds, maps and papers deposited or kept in his office; he shall also record, or cause to be recorded, in a plain and distinct hand writing, in suitable books to be provided and kept in his office, all deeds, mortgages, maps, instruments and writings authorized by law to be recorded in his office, and left with him for that purpose, and shall perform all other duties required of him by law in relation thereto.

Register of
deeds.

SEC. 8. Every register of deeds shall keep a general index, direct and inverted, in his office; he shall make correct entries in such general index, of every instrument recorded concerning or effecting real estate, under appropriate headings, entering the names of the grantors and

Index.

Deeds: ks.

grantees in alphabetical order. He shall make in such general index or indexes, correct entries of every instrument required by law to be entered in the general index or indexes, direct. And whenever any mortgage, bond or other instrument has been released or discharged from record, whether by written release upon the margin of the record, or by recording a deed of release, the register shall immediately note in the appropriate index, both under the head of grantor and grantee, and in column headed "remarks," and opposite to the appropriate entry, that such instrument has been satisfied.

Receiving
books.

SEC. 9. He shall also keep a receiving book, each page of which shall be divided into six columns, specifying the time of reception, the names of grantors, the names of grantees, from whom received to whom delivered, and fees received. Whenever any instrument has been received by him for record, he shall immediately indorse upon such instrument his certificate, noting the day, hour and minute of its reception, the book and page where recorded, and the fees received for recording the same, and the date of record of such instrument shall be from the date of filing; whenever any instrument has been filed as aforesaid, the register shall immediately make an entry of the same in his receiving book, under the appropriate heading, with the amount paid as fee for recording the same, and after such instrument is recorded, he shall deliver it to the person authorized to receive the same, writing the name of the person to whom it is delivered in the appropriate column; but no register of deeds shall be bound to perform any of the duties required to be performed by this act as such register, for which a fee is allowed, unless such fee has been paid or tendered.

Copies.

SEC. 10. Copies of all papers filed in the office of register of deeds, and transcripts from the books of record kept therein, certified by him under the seal of his office, shall be *prima facie* evidence in all cases.

ARTICLE IV.

Sheriff

SEC. 1. There shall be in each county organized for judicial purposes, a sheriff, who shall be *ex officio* county collector, shall hold his office for the term of two years, and until his successor is elected and qualified, or appointed and qualified, as the case may be, and who shall, before he enters on the duties of his office, take an oath to support the constitution of the United States and the act organizing the territory of Wyoming, and to faithfully discharge the duties imposed upon him by law as such sheriff and *ex officio* collector, which said oath shall be indorsed on the back of his certificate of election or appointment, and he shall also execute a bond to the people of the territory of Wyoming, with sufficient sureties, in the penal sum of four thousand dollars, to be approved by the board of county commissioners, conditioned for the faithful performance of the duties of sheriff as required by law, and that he will pay according to law, all moneys which shall come into his possession belonging to the territory, county school fund, or to any person or corporation, as such sheriff, and that he will render a just and true account thereof, and shall deliver to his successor in office or to any other person authorized by law to receive them, all moneys, books, papers, and other things appertaining thereto or belonging to his office as such sheriff; and he shall at the same time execute another bond to the people of the territory of Wyoming, in such penal sum as may be prescribed by the board of county commissioners, conditioned that if said sheriff as *ex officio* collector, and his deputy or deputies, and all persons employed in his office, shall faithfully and promptly perform the duties required of collector by the laws of this territory, to the satisfaction of the board of county commissioners, and if he, the said sheriff and his deputies, shall collect and pay according to law, to the proper officer or person, all moneys which shall come to his hands as *ex officio* county collector, and shall render a just true account thereof when ever so required by the board of

Oath of sheriff.

Ex officio collector.

county commissioners or any provisions of law, and shall deliver to his successor in office, or to any other person authorized by law to receive the same, all moneys, books, papers, and other things appertaining thereto, or belonging to his office, said bond shall be null and void, otherwise to remain in full force and effect, which said bond, together with the certificate of his election or appointment, shall be filed in the county clerk's office, and no person shall be received as a surety on said bond who is not worth at least two thousand dollars over and above his just debts and exemptions provided by law; *Provided*, That no person shall be elected sheriff for more than two terms in succession.

Proviso.

Under sheriff.

SEC. 2. It shall be the duty of the sheriff to appoint an under sheriff who shall qualify as required by law of deputy sheriffs, and who shall be sheriff in case of the death, resignation, or other disability of the sheriff.

Deputy sheriffs

SEC. 3. The sheriff of each county, may, after entering upon the duties of his office, appoint in writing, one or more deputies to assist him in the performance of the duties required of him by law, as such sheriff and *ex officio* county collector, and for whose official acts he shall be responsible, and he may require each of such deputies to enter into bonds to him for the faithful performance of the several duties of his office; the written appointment of each deputy with the usual oath indorsed thereon, shall be filed in the county clerk's office of the proper county; each deputy shall hold his office during the pleasure of the sheriff, who shall upon revoking the appointment of any deputy, indorse such revocation and the date thereof upon such written appointment, and shall also give ample notice of such revocation. Each sheriff may also appoint special deputies to do particular acts, which shall be specified in each of such appointments, and for each of whose official acts he shall be responsible, but such appointments are not required to be filed or revoked as in the case of regular deputies. *Provided*, That no assessor shall be appointed deputy sheriff or collector.

Bond.

Proviso.

SEC. 4. The sheriff shall have charge and custody of

the jails of his county, and of the provisions in the same, and shall keep them himself or by his deputy or jailor whom he may appoint specially for that purpose, and for whose acts he and his sureties shall be liable.

Custody of
jails.

SEC. 5. The sheriff in person or by his deputy or deputies, shall serve and execute according to law, all processes, writs, precepts and orders issued out of any court of record in his county in all criminal and civil cases or made by lawful authority and to him directed, and he shall attend upon all courts of record in his county.

Execution of
process.

SEC. 6. It shall be the duty of the sheriff and deputy sheriffs to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots, and unlawful assemblies and insurrections, for which purpose and for the service of process in civil and criminal cases, and in apprehending and securing any person for felony or breach of the peace, they, and every coroner and constable, may call to their aid such person or persons of their county, as they may deem necessary.

Peace officers

SEC. 7. Every paper required by law to be served on the sheriff, may be served on him in person or left at his office during business hours, and no sheriff or deputy shall appear or advise as attorney or counselor in any case in any court.

Service of
papers.

SEC. 8. Every sheriff as *ex officio* county collector shall have and keep in his office, a "cash book," wherein shall be entered and set down every sum of money paid to him by virtue of his office, and the date of such payment, and the name of the person paying the same, the account upon which the same was paid, and the nature of the funds so paid, to him whether gold, silver, United States treasury notes, bank bills, or territorial or auditor's warrants or other territorial or county scrip, or evidences of territorial or county indebtedness, and the amount of each separate kind; and such cash book shall at all reasonable hours of the day be open to the inspection and examination of all persons desiring to inspect or examine the same.

"Cash book."

Receipts.

SEC. 9. Upon the payment of any money to him as aforesaid, he shall issue his receipt therefor to the person paying the same, setting forth in such receipt all of the matters prescribed in the preceding section, to be entered in such cash book.

Faithful performance of duty

SEC. 10. Every sheriff as sheriff and *ex officio* collector shall faithfully perform all other duties required of him by the laws of this territory, in addition to those specified in this act.

Neglect of duty.

SEC. 11. Every sheriff as *ex officio* county collector, who shall fail, neglect or refuse to have and keep in his office such cash book as required by section eight of this act, or shall fail, neglect or refuse to set down in said cash book each and every requirement as set forth in said section, or shall make any false or deficient entry thereof, or shall fail, neglect or refuse to have and keep said cash book at his office during business hours, or shall fail, neglect or refuse to permit any person to inspect or examine the same at any reasonable hour of the day, or shall fail, neglect or refuse to issue his receipt for any moneys collected or received by him, as such collector as required in section nine of this article or shall fail to collect and pay over any moneys required to be collected and paid over, or shall fail, neglect or refuse to do any other official act required of him by law; shall in addition to other penalties that may be prescribed by law, be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than fifty dollars nor more than five hundred dollars, and the court may, as an additional penalty, adjudge that such sheriff be removed from his office. This section shall extend to the deputies of every such sheriff.

ARTICLE V.

Assessor.

Assessor.

SEC. 1. There shall be in each organized county, an assessor, who shall hold his office for the term of two years, and until his successor is elected and qualified according to law, or appointed and qualified according to law, as the case

may be, and who shall perform the duties of assessor as prescribed by law.

SEC. 2. Each assessor shall receive from his county such sum, not exceeding seven dollars per day for each day of actual service, as the board of county commissioners may deem right and just. Per diem

ARTICLE VI.

Coroner.

SEC. 1. There shall be in each organized county, a coroner, who shall hold his office for two years, and until his successor is elected and qualified according to law, and who shall take an oath to support the constitution of the United States, and the act organizing the territory of Wyoming, and to faithfully perform the duties of the office of coroner as prescribed by law; and shall also give bond to the people of said territory, in the penal sum of one thousand dollars, with sufficient sureties, to be approved by the board of county commissioners, conditioned that he will faithfully perform all duties required by law as such coroner. Coroner.

SEC. 2. When the sheriff, from any cause, shall be committed to the jail of his county, the coroner shall be keeper thereof, during the time the sheriff shall remain prisoner therein. When to keep jail.

SEC. 3. Every coroner shall serve and execute process of every kind, and perform all other duties of the sheriff, when the sheriff shall be a party to the case. In such case he shall exercise the powers and proceed in the same manner as prescribed for the sheriff in performance of similar duties. Execution of process.

SEC. 4. The coroner shall hold an inquest upon the dead bodies of such persons only, as are supposed to have died by unlawful means, or the cause of whose death is unknown. When he has notice of the dead body of any person supposed to have died by unlawful means, or the cause of whose death is unknown, found or being in the county, it shall be his duty to summon forthwith six citizens Inquests.

of the county, to appear before him at a time and place named.

Summoning
bystanders.

SEC. 5. If any juror fails to appear, the coroner shall summon the proper number from the bystanders immediately, and proceed to impanel them, and administer the following oath in substance:

Oath.

"You do solemnly swear (or affirm) that you will diligently inquire and true presentment make, when, how and by what means, the person whose body lies here dead, came to his death according to your knowledge and the evidence given you, so help you God."

Subpoenas.

SEC. 6. The coroner may issue subpoenas within his county for witnesses, returnable forthwith or at such time as he may direct therein, and witnesses shall be allowed the same fees as in cases before a justice of the peace, and the coroner shall have the same authority to enforce the attendance of witnesses and to punish them and jurors for contempt in disobeying his process, as justices of the peace have in cases before them.

Oath.

SEC. 7. An oath shall be administered to each witness, as follows:

"You do solemnly swear (or affirm) that the testimony which you shall give to this inquest concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth, so help you God." The testimony of the witness sworn shall be reduced to writing under the coroner's order, and subscribed by each witness.

Inquisition in
writing.

SEC. 8. The jurors having inspected the body, heard the testimony and made all needful inquiries, shall return to the coroner their inquisition in writing under their hands, stating therein as near as possible the name of the person, and when, how and by what means, if known, he came to his death.

Arrest.

SEC. 9. If the inquisition find a crime has been committed on the deceased, and name the person who the jury believes has committed it, hereupon, if the person charged be present, the coroner may order his arrest by an

officer or any person, and shall then make a warrant requiring the officer or other person to take him before a justice of the peace. But if the person charged be not present, and the coroner believes he can be taken, and may escape unless immediately taken, he may issue a warrant to the sheriff or any constable of the county requiring him to arrest the person and take him before a justice of the peace; and the warrant of a coroner in such cases, shall be of equal authority with that of a justice of the peace, and when the person charged is brought before the justice, like proceedings shall be had as in similar cases commenced before a justice of the peace sitting as court of inquiry.

SEC. 10. The coroner shall then return to the district Inquisition. court, the inquisition, the written evidence, and a list of witnesses who testify material matter.

SEC. 11. The coroner shall cause the body of a Delivery of body. deceased person, which he is called to view, to be delivered to his friends, if there be any, if not, he shall cause him to be decently buried, the expenses of the same to be paid from any property found with the body, or if there be none, then from the county treasury, by certifying an account of the expenses to the board of county commissioners, which shall be acted upon by said board as in cases of other accounts presented to them.

SEC. 12. When there is no coroner, or in case of his Absence of coroner. absence, or inability to act, any justice of the peace of the same county is authorized to perform the duties of coroner in relation to dead bodies.

SEC. 13. When an inquisition is being held, if the Scientific examination. coroner or the jury shall deem it requisite, he may summon one or more physicians or surgeons, to make a scientific examination, and may allow, in such case, a reasonable compensation; subject to the confirmation of the board of county commissioners.

ARTICLE VII.

County Surveyor.

SEC. 1. There shall be in each organized county, a Surveyor.

county surveyor, who shall hold his office for two years, and until his successor is elected or appointed and qualified according to law. He shall take the oath prescribed in this act to be taken by other county officers, said oath to be indorsed on his certificate of election or appointment, and shall give bond with sureties, to the people of this territory in the penal sum of one thousand dollars, for the faithful performance of his duties, which oath and bond shall be filed in the county clerk's office.

Official duties.

SEC. 2. It shall be the duty of the county surveyor to execute any survey which may be required by order of any court, or upon application of any individual or corporation, and the certificate of the county surveyor shall be admitted as legal evidence in any court of the territory, but the same may be explained or rebutted by other evidence.

Records.

SEC. 3. The county surveyor shall keep a correct and fair record of all surveys made by him in a book to be provided for that purpose by the county, which he shall transmit to his successor in office. He shall also number such surveys progressively, and shall also preserve a copy of field notes and calculations of each survey, indorsing thereon its proper number; a copy of which, and also a fair and accurate plat, together with a certificate of survey, shall be furnished by said surveyor to any person requiring the same.

ARTICLE VIII.

County Attorney.

County attorney.

SEC. 1. There shall be in each organized county a county attorney, who shall before entering upon the duties of his office, take the oath required of other county officers in this act, which oath shall be indorsed on the back of his certificate of election or appointment, and shall also give bond to the people of this territory in the penal sum of two thousand dollars, with sufficient sureties, to be approved by the board of county commissioners, conditioned for the faithful performance of the duties of his office as required by

law, and said certificate and bond shall be filed with the county clerk, and a copy of said certificate of election shall be filed by such attorney with the clerk of the district court sitting for his county.

SEC. 2. Every county attorney shall appear in the district court in behalf of the territory and the county in which he may be elected or appointed, in all indictments, suits and proceedings which may be pending or arise in said county, wherein the territory or the people thereof, or said county may be a party, he shall also appear at the hearing of every writ of *habeas corpus*, sued out in his county by any person charged with or convicted of any public offense before the judge of his district, he shall prosecute or defend against all appeals and writs of error which may be removed from the district court of his county to the supreme court of this territory, in all cases where said county or territory is a party in all such indictments, actions, suits or proceedings which may be brought to the district court, when sitting in and for said county, by change of venue from any other district court of this territory, and he shall appear in the preliminary examination of persons charged with any offense before any justice of the peace or judge within his county. Nothing contained in this section shall be so construed as to prevent the county commissioners of any county from employing one or more attorneys to appear and prosecute or defend or assist said attorney in so doing in behalf of the people of the territory or such county, in any such indictment, action or proceeding.

Duties.

Habeas corpus

Proviso.

SEC. 3. The county attorney, upon request of any county officer of his county, shall without fee, give his opinion in writing upon all questions of law having reference to the duties of such officer which may be submitted, and shall file and preserve in his office a copy of all such opinions.

Opinions in writing, gratis.

SEC. 4. Each county attorney shall receive such fees as may be allowed him by law, and the county attorney shall not receive any fee from, or prosecute or defend for any

Fees.

Liability of
sureties.

individual or corporation in any civil or criminal suit or proceeding at law in which this territory or his county may be a party, but in all such cases he shall prosecute or defend for said territory or county, and if such attorney shall fail, neglect or refuse to perform any and all official duties enjoined upon him by law, he and his sureties shall be liable in each case on his official bond in a sum not less than one hundred dollars and not more than five hundred dollars, in the discretion of the court having jurisdiction of such cases.

ARTICLE IX.

County Superintendents of Public Schools.

Superintendent
of public schools.

Oath.

Bond.

SEC. 1. There shall be in each organized county, a superintendent of public schools, who shall, before entering upon the duties of his office, take the oath prescribed for other county officers, which oath shall be indorsed on the back of his certificate of election or appointment; he shall also give bond to the people of the territory in the penal sum of five hundred dollars for the faithful performance of all duties required of him by law as such superintendent, to be approved by the board of county commissioners, and, together with said certificate and oath, filed in the county clerk's office.

Powers.

SEC. 2. Each superintendent of public schools shall have such powers and perform such duties as may be required of him as such superintendent by the laws of this territory, and shall receive such compensation as directed by law.

ARTICLE X.

Justices and Constables.

Justice.

SEC. 1. There shall be elected or appointed in each county, one or more justices of the peace and constables, in such precincts as the board of county commissioners may direct, who shall, before entering upon the duties of their offices, take the oath required of other county officers, which oath shall be indorsed on the back of their certificates

of election or appointment, and shall also give bonds in the sum of five hundred dollars each, payable to the people of the territory, with sufficient sureties, to be approved by the board of county commissioners, conditioned for the faithful discharge of the duties of their respective offices and that they will pay over all moneys which may come to their hands by virtue thereof.

Constables.

SEC. 2. Each justice of the peace and each constable shall reside and have his office in the precinct where he resides at the time of his election or appointment.

Offices at place of residence.

ARTICLE XI.

Miscellaneous Provisions.

SEC. 1. Every sheriff, county clerk, and judge of probate shall keep his office at the county seat of his county, and in the office provided by the county; if there be none provided, then at such place as the board of county commissioners may direct, and they shall each keep the same open during the usual business hours of each day, sundays excepted; and all books and papers required to be in their offices, shall be open to the examination of any person; and if any person or officer shall neglect to comply with the provisions of this section, he shall forfeit, for each day he so neglects, the sum of five dollars.

Miscellaneous provisions.

SEC. 2. Every county officer provided for by law, shall, before entering upon the duties of his office, and within twenty days after the commencement of the term for which he was elected or appointed, execute and deposit his official bond, as prescribed by law, and every such officer shall also, within the same time, take and subscribe the oath of office prescribed by law, before some officer authorized to administer oaths, and deposit the same with his official bond as prescribed by law.

Execution of bond.

SEC. 3. Copies of all documents, writs, proceedings, instruments, papers and writings duly filed or deposited in the office of any judge of probate, county clerk or county treasurer, and transcripts from books of record or

Documents.

proceedings kept by any of said officers, with the seal of his office affixed, shall be *prima facie* evidence in all cases.

Treble dam-
ages.

SEC. 4. No county officer shall directly or indirectly ask, demand or receive for any service required to be by him performed in the discharge of any of his official duties any greater fees than are allowed by law, on pain of forfeiture of treble damages to the party aggrieved, and being fined in a sum not less than twenty-five dollars, and not more than two hundred dollars.

Powers.

SEC. 5. Whenever any county officer shall be required to perform the official duties of any other officer in this territory, he shall, for the time being, have the same powers in respect to the duties of such office, as are given by law to the officer whose duties he shall perform, and shall be entitled to receive the same compensation for his services.

Official bonds.

SEC. 6. Every official bond of any county officer, where not otherwise provided by law, shall be payable to the people of the territory of Wyoming, and an action shall lie thereon to the use of any party aggrieved, in the name of the people.

Eligibility to
office.

SEC. 7. No person shall be eligible for any county office unless he be an elector, and no person shall be received as surety on the official bond of any county officer unless he be an actual resident of this territory.

Payment of
moneys.

SEC. 8. Each justice of the peace and each constable shall pay all moneys that may come into his hands by virtue of his office to any party or parties entitled to the same, upon demand of such party or parties, whether collected on attachment, execution or otherwise; and all moneys collected by any constable officially, shall be by him paid to the justice issuing the process whereby he collected the same, on the return day thereof, or as soon as collected if prior to the return thereof, and if any justice of the peace or constable shall fail, neglect or refuse to pay over any moneys as required in this section, or shall fail, neglect or refuse to deliver all book, papers, records or other property appertaining to his office to his successor in office, he shall be

subject to a fine of not less than twenty-five dollars, and not more than one hundred dollars, for each offense, and shall also be liable on his official bond to the person aggrieved.

Approved, 10th December, 1869.

GUARDIANS AND WARDS.

CHAPTER 5.

AN ACT CONCERNING GUARDIANS AND WARDS.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

SEC. 1. The father is the natural guardian of the persons of his minor children. If he dies, or is incapable of acting, the mother becomes the guardian.

Guardian.

SEC. 2. The natural, and actual guardian of any minor child may, by will, appoint another guardian for such minor. If without such will, both parents be dead or disqualified to act as guardian, the probate court may appoint one.

Appointment.

SEC. 3. Although the parents are living and of sound mind, yet if the minor has property not derived from either of them, a guardian must be appointed by the probate court to manage such property.

Appointment
by probate court.

SEC. 4. The father, or, in case of his death, absence or incapacity, the mother may be appointed the guardian to take charge of the property of his minor child, if deemed by the court, a suitable person for that purpose.

Minor child.

SEC. 5. If the minor be over the age of fourteen years and of sound intellect, he may select his own guardian, subject to the approval of the court.

Selection of
guardian.

SEC. 6. Guardians appointed to take charge of the property of the minor must give bond; with surety, to be

Bond.

approved by the court, in a penalty double the value of the personal estate, and of the rents and profits of the real estate of the minor, conditioned for the faithful discharge of their duties as such guardians, according to law. They must also take an oath of the same tenor, as the condition of the bond.

Inventory.

SEC. 7. Within twenty days after their appointment, they must make out an inventory of all the property of the minor which shall be appraised in the same manner as the property of a deceased person. The inventory must be filed in the office of the judge of the probate court.

Powers.

SEC. 8. Guardians of the persons of minors have the same power and control over them that parents would have if living.

Management
of interests.

SEC. 9. Guardians of the property of minors must prosecute and defend for their wards. They must, also, in other respects, manage their interests under the direction of the court; they may thus lease their lands or loan their money during their minority, and may do all other acts which the court may deem for the benefit of the wards.

Mortgage or
sale.

SEC. 10. When not in violation of the terms of a will by which a minor holds his real property, it may, under the direction of the probate court, be sold or mortgaged on the application of the guardian, either when such sale or mortgage is necessary for the minor's support or education, or when his interest will be thereby promoted by reason of the unproductiveness of the property, or of its being exposed to waste, or of any other peculiar circumstances.

Petition.

SEC. 11. The petition for that purpose, must state the grounds of the application, must be verified by oath, and a copy thereof, with a notice of the time at which such application will be made to the court, must be served personally upon the minor, at least ten days prior to the term fixed for such application.

Postponement.

SEC. 12. The court, in its discretion, may direct a postponement of the matter, and may order such further

publication through the newspapers or otherwise, as it may deem expedient.

SEC. 13. It may, also, direct a reference for the purpose of ascertaining the propriety of ordering the sale or mortgage as applied for. Reference.

SEC. 14. Before any such sale or mortgage can be executed, the guardian must give security to the satisfaction of the court, the penalty of which shall be at least double the value of the property to be sold, or of the money to be raised by the mortgage, conditioned that he will faithfully perform the duties in that respect, and account for and apply all moneys received by him under the direction of the court. Security.

SEC. 15. When the application for the sale of property is resisted, the court may, in its discretion, award costs to the prevailing party, and may, when satisfied that there was no reasonable ground for making the application, direct the costs to be paid by the guardian from his own funds. Costs.

SEC. 16. Decds may be made by the guardian in his own name, but they must be returned to the court, and the sale or mortgage be approved before the same are valid. Decds.

SEC. 17. The same rules that are prescribed in the sale of real property by executors and administrators, shall be observed in the sales under the provisions of this act, as far as applicable. Rules under this act.

SEC. 18. A failure to comply with any order of the court in relation to the guardianship, shall be deemed a breach of the condition of the guardians' bond, which may accordingly be put in suit by any one aggrieved thereby, for which purpose the court may appoint another guardian of the minor, if necessary. The court may, also, commit him to jail until he complies with such order. Guardianship.

SEC. 19. Guardians of the property of minors must account, on oath, annually, or oftener, if required by the court. It may, also, direct them to give new or supplemental security, or may remove them for good cause shown, which cause must be entered on the records. Annual accounting.

SEC. 20. Where a new guardian is appointed, the court Effects.

may order the effects of the minor, which are in the hands of his predecessor, to be delivered up to such new guardian.

Non-resident.

SEC. 21. The foreign guardian of any non-resident minor may be appointed the guardian of such minor, by the court of the county wherein he has any property, for the purpose of selling or otherwise controlling that and all other property of such minor within this territory.

Appointment.

SEC. 22. Such appointment may be made, upon his filing, in the office of the probate judge of the county wherein there is any such property, an authenticated copy of the order for his appointment. He shall thereupon qualify, like other guardians except as in the next succeeding section is prescribed.

Copy of order.

Inventory.

SEC. 23. Upon the filing of an authenticated copy of the bond and the inventory rendered by the guardian in the foreign state, if the court is satisfied with the sufficiency of the amount of the security, it may dispense with the filing of an additional bond.

Compensation.

SEC. 24. Guardians shall receive such compensation as the court may from time to time allow. The amount allowed and the service for which the allowance was made, must be entered upon the records of the court.

SEC. 25. This act shall take effect and be in force from and after its passage.

Approved, December 9th, 1869.

EXECUTORS AND ADMINISTRATORS.

CHAPTER 6.

AN ACT RESPECTING EXECUTORS AND ADMINISTRATORS, OF THEIR APPOINTMENT AND REMOVAL FROM OFFICE.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SEC. 1. The probate courts in vacation shall grant letters testamentary and of administration. Letters testamentary. Whoshall grant

SEC. 2. Letters testamentary and of administration, shall be granted in the county in which the mansion, house or place of abode of the deceased is situated. If he had no mansion, house, or place of abode at the time of his death, and be possessed of lands, letters shall be granted in the county in which the land, or a part thereof lies. If the deceased had no mansion, house, or place of abode, and was not possessed of lands, letters may be granted in the county in which he died, or where the greater part of his estate may be. If he died out of the territory, having no mansion, house, place of abode or lands in this territory, such letters may be granted in any county. Where granted.

SEC. 3. All orders, settlements, trials and other proceedings, entrusted by this act to the probate court, shall be had or made in the county in which the letters testamentary, or of administration were granted. Orders, trials, &c., where made.

SEC. 4. No judge of any probate court, in his own county, and no person under twenty-one years of age, or of unsound mind, shall be executor or administrator; no married woman shall be executrix or administratrix, nor shall the executor of any executor in consequence thereof, be executor of the first testator. Who shall not settle estates.

Letters of administration, to whom granted.

SEC. 5. Letters of administration shall be granted, first to the husband or wife, or to those who are entitled to distribution, of the estate, or one or more of them, as the court in vacation shall believe will best manage and improve the estate.

To apply within ten days.

SEC. 6. If no such persons apply for such letters within ten days after the death of the deceased, letters may be granted to any person whom the court shall consider most suitable.

Letters granted to persons next entitled thereto.

SEC. 7. The probate court in vacation, may, in its discretion or on the application of any person interested, issue a citation to the persons entitled to administration, calling on them to administer, and if they fail to take out letters within ten days after the service of the citation, or if the persons entitled to preference, file their renunciation thereof, in writing, with the probate court, letters of administration shall be granted to the person next entitled thereto.

Refuse to act.

SEC. 8. After probate of any will, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein. If all such persons refuse to act, or be disqualified, letters of administration shall be granted to the person to whom administration would have been granted if there had been no will.

To give bonds.

SEC. 9. When there are two or more persons named co-executors in any will, none shall have authority to act as such, or intermeddle, except those who give bond, unless otherwise provided in the will.

Will contested, &c.

SEC. 10. If the validity of a will be contested, or the executor be a minor, or absent from the territory, letters of administration shall be granted during the time of such contest, minority or absence, to some other person who shall take charge of the property and administer the same according to law, under the direction of the court, and account for, and pay and deliver all the money and

property of the estate to the executor or regular administrator, when qualified to act.

SEC. 11. Every applicant for letters of administration at the time of application, shall make an affidavit, stating, to the best of his knowledge and belief, the names of places of residence of the heirs of the deceased, and that the deceased died without a will, as he verily believes.

Affidavit made
by applicant.

SEC. 12. At the time that letters of administration are granted, the administrator shall take and subscribe an oath, that he will make a true and perfect inventory of, and faithfully administer all the estate of the deceased, and pay the debts as far as the assets will extend, and account for and pay all assets which shall come to his possession or knowledge, according to law.

Oath.

SEC. 13. A similar oath, with such variations as the case may require, shall be taken by administrators of the goods remaining unadministered, and by administrators during the time of contest about a will, or the minority or absence of an executor.

Oath.

SEC. 14. Every administrator, with the will annexed, and executor at the time letters are granted to him, shall take an oath that he will make a perfect inventory of the estate, and faithfully execute the last will of the testator, pay the debts and legacies as far as the assets will extend, render just accounts and faithfully perform all things required by law touching such executorship or administration.

Oath to make
perfect inventory

SEC. 15. The probate court in vacation, shall take a bond of the person to whom letters of administration are granted, with two or more sufficient securities, residents in the county, to the territory of Wyoming, in such amount as the court shall deem sufficient, not less than double the amount of the estate.

Bond.

SEC. 16. The condition of such bond shall be as follows: The condition of the above bond is, that if A. B., administrator of the estate of W. C., deceased, shall faithfully administer said estate, account for, pay and deliver all money and property of said estate, and perform all other

Conditions of
bond.

things touching said administration required by law, or the order or decree of any court having jurisdiction, then the above bond to be void, otherwise to remain in full force.

Bond.

SEC. 17. A similar bond, with such variations as the case may require, shall be given by all executors (unless otherwise provided in the will,) and administrators, with the will annexed, or of the goods remaining unadministered, and all administrators during the time of a contest about a will, or of the minority or absence of an executor.

Who not taken
as security.

SEC. 18. No judge of probate, and no sheriff, clerk of a court, or deputy of either, and no attorney at law shall be taken as security in any bond required to be taken by this act.

Who taken as
security.

SEC. 19. The probate court, in vacation, shall take special care to take as securities, men who are solvent and sufficient, and who are not bound in too many other bonds, and to satisfy themselves, they may take testimony, or examine on oath, the applicant or persons offered as his securities, which testimony and oath shall be filed with or endorsed on the bond.

Judge of probate to preserve
bonds.

SEC. 20. The judge of the probate court shall record in a well bound book, kept for that purpose, all bonds given by executors and administrators, and preserve the original in regular files.

Letters of administration to
be recorded.

SEC. 21. All letters testamentary, and of administration, shall be recorded by the judge of the probate court, in a well bound book, kept for that purpose, before they are delivered to the executor or administrator, and the judge shall certify on the letters that they have been recorded.

Judge fined.

SEC. 22. If any judge deliver such letters without recording the same, he may be fined by the court, and shall forfeit to the party injured double the damages occasioned by such default.

Certified copies.

SEC. 23. Copies of such letters, and copies of the record thereof, certified under the seal of the probate court, shall be evidence.

Form.

SEC. 24. All letters testamentary, issued to executors

under the provisions of this act, may be in the following form: Territory of Wyoming county of _____ ss. The territory of Wyoming to all persons to whom these presents shall come, greeting: Know ye that the last will and testament of A. B., deceased, hath, in due form of law been exhibited, proved and recorded in the office of the probate court for _____ county, a copy of which is hereunto annexed; and in as much as it appears that C. D. has been appointed executor in, and by the said last will and testament, to execute the same, and to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein, and that the said last will may be executed according to the request of the testator, we do hereby authorize him, the said C. D. as such executor, to collect and secure, all and singular, the goods and chattels, rights and credits, which were of the said A. B., at the time of his death, in whosoever hands or possession the same may be found, and to perform and fulfill all such duties as may be enjoined upon him by said will, so far as there shall be property, and in general to do and perform all other acts which are now or hereafter may be required of him by law. In testimony whereof, I, G. P., judge of the probate court in and for said county of _____, have hereunto signed my name, and affixed the seal of said court, this _____ day of _____ A. D. 18____ G. P., Judge of Probate.

SEC. 25. Letters of administration hereafter to be issued in this territory, may be in the following form:

Form.

Territory of Wyoming, county of _____ ss. The territory of Wyoming to all persons to whom these presents shall come greeting; know ye, that whereas, A. B. late of the county of _____, died intestate, as it is said, having, at the time of his death, property in this territory, which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; to the end, therefore, that said property may be collected, preserved and disposed according to law, we do hereby appoint C. D.,

administrator of all and singular the goods and chattels, rights and credits, which were of the said A. B. at the time of his death, with full power and authority to secure and dispose of said property according to law, and collect all moneys due said deceased, and in general to do and perform all other acts and things which are or hereafter may be required of him by law. In testimony whereof, I, G. P., judge of probate, in and for the county of _____, aforesaid, have hereunto signed my name, and affixed the seal of said court, this _____ day of _____, A. D. 18—— G. P., Judge of Probate.

*De bonus non,
minority, &c.*

SEC. 26. In all cases where letters of administration, with the will annexed, letters of administration *de bonus non*, during minority or absence, shall hereafter be issued by the probate court in vacation, the same shall be issued in conformity to the foregoing forms as near as may be, taking care to make the necessary variations, additions or omissions, to suit each particular case.

*Letters re-
voked.*

SEC. 27. If, after letters of administration granted, a will of the deceased be found and probate thereof be granted, the letters shall be revoked, and letters testamentary or of administration, with the will annexed, shall be granted.

*Letters re-
voked.*

SEC. 28. If a will be proved and letters thereon granted and the will be afterwards set aside, the letters shall be revoked and other letters granted of the goods unadministered.

*Powers of ex-
ecutrix extin-
guished by mar-
riage.*

SEC. 29. If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate, nor shall the administration thereby devolve upon him, but the marriage shall extinguish her powers and her letters be revoked.

*Letters of ex-
ecutor revoked
on account of
crime.*

SEC. 30. If any executor or administrator become of unsound mind, or be convicted of any felony or other infamous crime, or become a habitual drunkard, or otherwise incapable or unsuitable to execute the trust reposed in him, or fail to discharge his official duties, or waste or mismanage the estate, or act so as to endanger any co-executor or

co-administrator, the probate court, upon complaint in writing made by any person interested, supported by affidavit, and due notice given to the person complained of, shall hear the complaint, and if they find it just, shall revoke the letters granted.

SEC. 31. If any heir, legatee, creditor or other person interested in any estate, file in the probate court an affidavit, stating that the affiant has sufficient cause to believe, and does believe, that the security in the executor's or administrator's bond has, or is likely to become insolvent, or has died, or has removed from the territory, or that the principal in such bond has, or is likely to become insolvent, or is wasting the estate, or that the penalty of such bond is insufficient, or that such bond has not been taken according to law, and shall have given the principal in such bond at least ten days notice of the complaint, the court shall examine into the complaint.

Affidavit of
heir, legatee, &c.

SEC. 32. If any person bound as security in the executor's or administrator's bond, file in the probate court an affidavit stating that the affiant has sufficient cause to believe, and does believe, his co-security has died, or has, or is likely to become insolvent, or has removed from the territory, or that the principal in such bond has, or is likely to become insolvent, or is wasting the estate, and shall have given to the principal in such bond at least ten days notice of such complaint, the court shall examine into the complaint.

Security or
principal insol-
vent.

SEC. 33. If the probate court find the complaint mentioned in either of the two preceding sections to be just, it shall order another bond and sufficient security to be given.

Another bor

SEC. 34. Such additional bond, when given and approved, shall discharge the former securities from any liability arising from any misconduct of the principal, after filing the same, and such former securities shall only be liable for such misconduct as happened prior to giving of such new bond.

Former secu-
rities discharged.

Failure to give
bond.

SEC. 35. If such person fail to give such additional bond and security within ten days after making such order, his letters shall thenceforth be deemed to be revoked, and his authority from that time cease.

Order for fur-
ther security.

Five days
notice.

SEC. 36. It shall be the duty of the probate court, whenever it shall appear necessary and proper, to order an executor or administrator to give other and further security, first giving such executor or administrator at least five days' notice of such intended order, and if such executor or administrator shall fail to give such further security within ten days after making such order, his letters shall thenceforth be deemed to be revoked, and his authority from that time cease.

Letters to be
published in
newspaper, or ten
handbills put up.

SEC. 37. If any executor or administrator publish for four weeks, in some newspaper in the county, a notice of his intention to apply to the probate court to resign his letters, and the court, on proof of such publication, shall believe that he should be permitted to resign, it shall so order. Said publication of notice in the newspaper, upon application to the probate court, for that purpose, may be dispensed with, and instead thereof the court may require said administrator to put ten written handbills in ten of the most public places in the county where he is conducting the business of his administration, at least twenty days before the term at which he intends to resign his administration.

Letters sur-
rendered.

SEC. 38. Such person shall then surrender his letters; his power from that time shall cease, and he shall pay the expenses of publication and all the proceedings on the application.

Remaining ex-
ecutors to per-
form duties of
all.

SEC. 39. If there be more than one executor or administrator of an estate, and the letters of part of them be revoked or surrendered, or a part die, those who remain shall discharge all the duties required by law respecting the estate.

New letters
granted, when.

SEC. 40. If all the executors or administrators of an estate die or resign, or their letters be revoked, in cases not otherwise provided for, letters of administration of the goods

remaining unadministered, shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced the administration, and the administrator shall perform the like duties and incur the like liabilities as the former executors or administrators.

SEC. 41. If any administrator or executor die, resign, or his letters be revoked, he, or his legal representatives, shall account for, pay and deliver to his successor, or to the surviving or remaining executor or administrator, all money, real and personal property of every kind, and all rights, credits, deeds, evidences of debt, and papers of every kind of the deceased, at such time and in such manner as the court shall order, on final settlement with such executor or administrator, or his legal representatives.

All property to be delivered to successor.

SEC. 42. The succeeding administrator, or the remaining executor or administrator, may proceed at law against the delinquent and his securities, or either of them, or against any other person possessed of any part of the estate.

Successor to proceed against delinquents.

SEC. 43. If any executor or administrator, fail to make either annual or final settlement, as required by law, and do not show good cause for such failure after citation, the probate court shall order the executor or administrator, to give notice when required, and to make such settlement, and may enforce obedience to such order by attachment, or may revoke his letters.

Failure to make settlements.

SEC. 44. In all cases where citation or attachment may be issued against any executor or administrator for failing to settle his accounts, such delinquent shall pay all costs incurred thereby.

Pay costs.

SEC. 45. The executor or administrator on the estate of any deceased member of a co-partnership, shall include in the inventory, which he is required by law to return to the probate court, the whole of the partnership estate, goods and chattels, rights and credits, appraised at its true value, as in other cases, but the appraisers shall carry out in the footing,

Estate of co-partners.

an amount equal only to the deceased's proportional part of the co-partnership interest.

Surviving
partner.

SEC. 46. The property thus appraised, shall remain with the executor or administrator, or be delivered over, as the case may be, to the surviving partner, who may be disposed to undertake the management thereof, agreeably to the conditions of a bond, which he shall be required to give to the territory of Wyoming, in such sum, and with such securities as is required in other cases of administration.

Bond.

Form of bond.

SEC. 47. The condition of such bond shall be, in substance, as follows: "The condition of the above bond is, that if A. B. surviving partner of the late firm of——, shall use due diligence and fidelity in closing the affairs of the late co-partnership, apply the property thereof towards the payment of the partnership debts, render an account, upon oath to the probate court, whenever by it thereunto required, of all the partnership affairs, including the property owned by the late firm, and the debts due thereto, as well as what may have been paid by the survivor towards the partnership debts, and what may still be due and owing therefor, and pay over, within one year, unless a longer time be allowed by the probate court, to the executor or administrator, the excess, if there be beyond satisfying the partnership debts, then the above bond to be void, otherwise to remain in full force."

Cited for neglect.

SEC. 48. The probate court shall have the same authority to cite such survivor to account, and to adjudicate upon such account, as in case of an ordinary administrator, and the parties interested shall have the like remedies, by means of such bond, for any misconduct or neglect of such survivor, as may be had against administrators.

Neglect to give
bond.

SEC. 49. In case the surviving partner, having been duly cited for that purpose, shall neglect or refuse to give the bond required in the forty-sixth and forty-seventh sections of this title; the executor or administrator on the estate of such deceased partner, in giving a bond, as provided in the following sections, shall forthwith take the whole

partnership estate, goods and chattels, rights, and credits, into his own possession, and shall be authorized to use the name of the survivor in collecting the debts due the late firm, if necessary; and shall with the partnership property pay the debts due from the late firm, with as much expedition as possible, and return or pay to the surviving partner his proportion of the excess, if there be any.

Administrator
to take possession.

SEC. 50. Before proceeding to administer upon such partnership property, as provided in the preceding section, such executor or administrator shall be required by the probate court to give further bond to its satisfaction, conditioned that he will faithfully execute that trust, with no unnecessary waste or expense, which bond may be enforced like other administration bonds.

Bond.

SEC. 51. Every surviving partner, on the demand of any [executor or] administrator of a deceased partner, shall exhibit to the appraisers, the partnership property belonging to the firm at the time of the death of such deceased partner, for appraisement, and in case the administration thereof shall devolve upon such executor or administrator, the said survivor shall surrender to him, on demand, all the property of such partnership, including their books and papers, and all necessary documents pertaining to the same, and shall afford him all reasonable information and facilities for the execution of his trust.

Surviving
partner.

SEC. 52. Every surviving partner who shall neglect or refuse to comply with the provisions of the preceding section, may be cited for such neglect or refusal before the probate court, and unless he comply with such provisions or show sufficient excuse for his omission, the probate court may commit him to the common jail of the county, there to remain until he consent to comply or is discharged by due course of law. Or if there be no jail, then to the sheriff, who shall keep him as other prisoners.

Consequences
of neglect.

SEC. 53. When two or more persons are appointed executors, the court in vacation may take a separate bond,

Bond, joint or
separate.

with securities from each of them, or a joint bond, with securities from all of them.

Letters not
granted to non-
residents-

SEC. 54. Letters testamentary and of administration shall in no case be granted to a non-resident of this territory: and when an executor or administrator shall become a non-resident of the county in which such letters were granted, the probate court, having jurisdiction of the estate of the testator or intestate of such executor or administrator, shall revoke his letters.

Of the Duties Respecting Money and Property.

Absolute prop-
erty of widows.

SEC. 55. Every executor and administrator, immediately after receiving letters, shall collect and take into possession the goods, chattels, money, books, papers and evidences of debt, or of title to any real or personal estate, except the property reserved as the absolute property of the widow.

Inventory.

SEC. 56. He shall make an inventory of all the real and personal estate of the deceased, describing the quantity, situation and title of the real estate, also the books and papers, the debts due, or to become due, to the deceased, the names of debtors, the date of contract, the amount of interest then due thereon, the rate of interest, and such further description as will render it a perfect inventory of the estate.

Affidavit an-
nexed.

SEC. 57. He shall annex to the inventory an affidavit, stating that it is a full inventory and description of all the money, goods, chattels and estate, real and personal, books, papers and evidences of debt and of title of the deceased, and of all debts due and becoming due, so far as he can ascertain them, except the property reserved as the absolute property of the widow, and that he was not indebted or bound in any contract to the deceased at the time of his death, except as stated in the inventory.

Inventory, filed
with judge of
probate.

SEC. 58. The inventory, with the affidavit, shall be filed in the office of the judge of the probate court within twenty days after the letters are granted.

SEC. 59. If, after making the first inventory, any other real or personal estate of the deceased, come to his possession or knowledge, he shall file a similar additional inventory thereof.

Additional inventory.

SEC. 60. At the time of appointing an administrator, or of granting letters testamentary to an executor, the court shall name two respectable house-holders of the vicinity of the last abode of the deceased, who are disinterested and of no kin to the administrator or executor, as witnesses to accompany and aid the administrator or executor in opening and examining the papers and money of the deceased, and in making an inventory thereof; and if they fail to attend, the court shall appoint others in their stead, so that two witnesses shall be present to attend the proceeding, before it shall be lawful for any executor or administrator to open or examine such papers or money, by virtue of his appointment.

Witnesses.

SEC. 61. The probate court shall allow such witnesses a compensation for such duties, not exceeding that allowed to appraisers.

Compensation.

SEC. 62. If any administrator or executor open or examine the papers or money of the deceased, without the publicity and attestation provided in this title, he shall forfeit and pay to the persons entitled to the estate, a sum not exceeding five thousand dollars, to be recovered before the probate court.

Forfeit.

SEC. 63. If the executor or administrator, or other person interested in any estate, file an affidavit in the probate court, stating that the affiant has good cause to believe, and does believe, that any person has concealed or embezzled any goods, chattels, moneys, books, papers or evidences of debt of the deceased, the probate court may cite such person to appear before them, and compel such appearance by attachment, and examine him and other witnesses on oath, for the discovery of the same.

Embezzlement.

SEC. 64. If any person refuse to answer proper inter-

Refusal to answer.

rogatories, the court may commit him to jail until he answer or be discharged by due course of law.

Right to goods
denied.

SEC. 65. If any person charged and cited as aforesaid, shall appear, and in his answers to the interrogatories, denying the right of the executor or administrator to such goods, chattels, moneys, books, papers or evidences of debt, the right thereof shall be tried by a jury, or if neither party require a jury, by the court in a summary manner, and judgment shall be rendered according to the right, and for costs.

Effects unlaw-
fully detained.

SEC. 66. If any person be convicted of unlawfully detaining such goods, chattels, money or effects, books, papers or evidences of debt, the court may compel the delivery thereof by attachment.

Estate to be
appraised.

SEC. 67. After having collected the personal estate, the executor or administrator shall cause the same to be appraised by three disinterested householders of the county.

Affidavit.

SEC. 68. Before entering on their duties, the appraisers shall make an affidavit, stating that they are not interested, nor of kin to any person interested in the estate, as heir or devisee, and that they will, to the best of their ability, view and appraise the present estate to them produced.

List and
amount.

SEC. 69. The appraisers shall view and appraise such property, and make a list specifying each article appraised, its value and total amount of the appraisement, which shall be signed by the appraisers or two of them.

Appraisement
filed.

SEC. 70. The appraisement and affidavit shall be filed in the office of the judge of the probate court, within thirty days after letters granted.

Compensation.

SEC. 71. Each appraiser shall receive from the estate three dollars per day for his attendance.

Additional ap-
praisements.

SEC. 72. Every executor or administrator shall cause similar appraisements to be filed of all personal estate, which shall come to his possession after the first appraisement.

Evidence.

SEC. 73. Inventories and appraisements may be given in evidence, but shall not be conclusive for or against any

executor or administrator, but other evidence may be introduced to vary the effect thereof.

SEC. 74. Within thirty days after letters are granted, the executor or administrator shall publish in some newspaper in the county, and if there be no newspaper published in the county, then in some newspaper of general circulation in the territory, and publish therein for three weeks, a notice that letters testamentary or of administration have been granted to him, stating the date and requiring all persons having claims against the estate, to exhibit them for allowance to the executor or administrator within six months after the date of the letters, or they may be precluded from any benefit of such estate; and that if such claims be not exhibited within one year from the date of the letter, they shall be forever debarred.

Notice within thirty days.

Claims to be exhibited within one year.

SEC. 75. When an estate has left no known heirs, the administrator shall also publish a notice for six weeks in some newspaper, containing the name of the intestate, a description of his person, the time and place of his death, the place of his nativity, if known, and the appraised amount of his estate.

No known heirs.

SEC. 76. Executors and administrators shall collect all money and debts of every kind due to the deceased, and give receipts and discharges therefor, and shall commence and prosecute all actions which may be maintained and are necessary in the course of his administration, and defend all such as are brought against him.

Collect money and debts.

Prosecute and defend.

SEC. 77. They shall prosecute and defend all actions commenced by or against the deceased, at the time of his death, and which might have been prosecuted or maintained by or against such executor or administrator.

Action commenced at time of death.

SEC. 78. For all wrongs done to the property, rights or interests of another, for which an action might be maintained against the wrong doer, such action may be brought by the person injured, or, after his death, by his executor or administrator against such wrong doer, and after his death, against his executors or administrators, in the same

Actions against wrong doers.

manner and with like effect, in all respects as actions founded upon contracts.

Not to extend
to actions for
libel, &c.

SEC. 79. The preceding section shall not extend to actions for slander, libel, assault and battery, or false imprisonment, nor to actions on the case for injuries to the person of the plaintiff, or to the person of the testator or intestate of any executor or administrator.

Debts.

SEC. 80. All debts due by an administrator to his testator or intestate, shall be considered as assets in his hands.

Debtor made
executor.

SEC. 81. If any person appoint his debtor executor of his will, such appointment shall not discharge the debt, but it shall be assets in his hands.

Absolute prop-
erty of widow.

SEC. 82. In addition to her portion of her deceased husband's estate, the widow shall be allowed to keep absolutely, for the use of herself and family, all the wearing apparel of the family, her wheels, looms, and other implements of industry; all yarn, cloth, meat, vegetables, groceries, and other provisions on hand, and provided and necessary for the subsistence of the widow and her family for twelve months, and as many beds, with bedding, as shall be necessary for herself and the family of the deceased residing with her and under her control, of which an inventory shall be made by the executor or administrator, and filed in the probate court.

Absolute prop-
erty not liable to
sale.

SEC. 83. The widow shall apply for such property named in the preceding section, before the same be distributed or sold, and the property so delivered, shall in no case be liable for the payment of the debts of the deceased.

Perishable
goods to be sold.

SEC. 84. Every executor or administrator, after the appraisement, shall sell at public sale, all goods and chattels of the deceased that are liable to perish, be consumed or rendered worse by the keeping, except such as are reserved by the widow, giving such credit as he may think best, subject to approval of the probate court, and take bonds or notes, with good security of the purchaser.

SEC. 85. If the perishable goods be not sufficient to pay Personal estate sold. the debts, the executor or administrator shall, in the same manner sell other personal estate, until the debts and legacies be all paid; but specified legacies shall not be sold in any case, unless it be necessary for the payment of the debts.

SEC. 86. Executors and administrators may assign the Assignment of notes, &c. notes and bonds of the estate to creditors, legatees and distributors, in discharge of such an amount of their claims equal to the amount of such bond or note.

SEC. 87. They shall give notice of the time and place Notice of sale. of sale for three weeks, in some newspaper in the county, or by hand bills, put up in eight public places in the county where the sale is made.

SEC. 88. If any testator directs his estate not to be When not to be sold. sold, the same shall be reserved, unless such sale be necessary for the payment of debts.

SEC. 89. When there are no known heirs or legal No heirs, &c. representatives, the administrator shall sell all personal estate of the deceased, within one year after administration is granted.

SEC. 90. If any executor or administrator apply to the Sale on application. probate court for permission to sell the personal estate of the deceased, or any part thereof, at private sale, and the court be satisfied that such sale would not be prejudicial to the persons interested in the estate, it may order such sale and prescribe the terms thereof.

SEC. 91. In every public sale, the executor or admin- Shall employ clerk, istrator, shall employ a competent clerk, not interested nor of kin to any heir or devisee of the estate.

SEC. 92. Such clerk shall keep a true account of the Duties of clerk sales made, make a list of sales, specifying each article sold, the price and name of the purchaser, and shall annex his affidavit to such list, stating that the same is a true account of the sales made by such executor or administrator, at the time specified.

SEC. 93. Such sale bill shall be filed by the executor Bill shall be filed.

or administrator in the office of the judge of the probate court, within ten days after the sale, and it shall be evidence in the same manner and with like effect as inventories.

Lease. SEC. 94. Executors and administrators, under the direction of the probate court, shall lease the real estate for any term not more than three years, and shall receive and recover the rents.

Repairs. SEC. 95. When any house, out building, fence or other improvements on the real estate requires repairs, the probate court may, on the application of any person interested, order the executor or administrator to cause the necessary repairs to be made without prejudicing creditors.

To compel delinquents. SEC. 96. At every term the probate court shall examine all inventories, appraisements and sale bills filed since the last term, to see if they have been made and filed according to law, and shall issue citations to compel all delinquents to comply with the law.

Indispensable labor. SEC. 97. If a person die leaving horses or other stock that require attention, crops ungathered, property so exposed as to be in danger of loss in value, or work in an unfinished state, so that the estate would suffer material loss from the want of care and additional labor, the executor or administrator may, until the meeting of the probate court, procure such indispensable labor to be performed on the most reasonable terms.

Further labor. SEC. 98. The probate court, on the application of any person interested, may, in such cases, authorize further labor to be performed, as the interest of the estate requires, and all sums thus paid, if approved by the court, shall be allowed as expenses of administration.

Interest. SEC. 99. All interest received by executors or administrators on debts due to the deceased, shall be assets in their hands, and if they lend the money of the deceased, or use it for their private purposes, they shall pay interest thereon to the estate.

Testimony. SEC. 100. The probate court shall exercise an equitable control in making executors and administrators account for

interest accruing to the estate on account of money loaned by them belonging to the estate, or otherwise, and for that purpose may take testimony, or examine the executor or administrator on oath.

SEC. 101. Every executor and administrator at the first term at which he is required to make settlement, shall render to the probate court a statement, on oath, of the amount of money of the estate actually on hand. Statement on oath.

SEC. 102. If, on the return of the inventory, or at any other time, it shall appear to the satisfaction of the probate court that there is a surplus of money in the hands of the executor or administrator, that will not be shortly required for the administration or payment of debts, it shall have discretionary power to order him to lend out the money on such terms, and for such time as may be deemed best. Power to lend money.

SEC. 103. The probate court may, at any time, make such orders as the interest of the estate may require, for the speedy collection of debts, or the sale or distribution of personal property. Speedy collection.

SEC. 104. All executors and administrators may give receipts and discharges for money received by them on account of the deceased, but if there be more than one executor or administrator, a majority shall join in such receipt or discharge, or they shall be void. Receipts and discharges.

SEC. 105. If personal property shall be bound by the lien of an execution or executions, whether such execution or executions shall have been levied or not at the time of the death of the testator or intestate, the executor or administrator shall, nevertheless, inventory, cause to be appraised, and sell the same as if no such lien existed, except that a separate inventory, appraisement and sale bill of such property, shall be made and returned. When bound by lien.

SEC. 106. The proceeds of the sale of such personal property shall be applied, under the direction of the probate court, in the following manner : How applied.

First, When there is but one execution, to the payment

of such execution, and the residue, if any, shall be assets to be administered according to law.

Second, When there is more than one execution, the liens whereof are of even date, to the payment of such executions, and the residue, if any, shall be assets, to be administered according to law; but if such proceeds shall not be sufficient to pay the whole, then in proportion to their respective amounts.

Third, When there is more than one execution, the liens whereof are of uneven dates, and such proceeds shall not be sufficient to pay the whole, to the payment thereof, according to their priority of lien.

Provisions.

SEC. 107. The provisions of the two preceding sections shall not be construed to deprive the widow of the benefit of the eighty-third section of this title, nor to deprive the demands classed in the first and second subdivision of the one hundred and forty-third section of this title, of their precedence over all other demands against the estate of the deceased.

Power of court

SEC. 108. In all cases where any person shall die, leaving a widow or other family, the probate court has power, if in its opinion it will not be prejudicial to creditors, and will be advantageous to such widow or others entitled to distribution in the estate, to order that no more of the personal estate shall be sold than will be sufficient to pay the debts:

Provido.

Provided, The probate court shall take good and sufficient security that the property shall be forthcoming to answer the demand of any creditor, or others concerned in the estate.

Inventory and
appraisement.

SEC. 109. In the cases specified in the preceding section, the executor or administrator shall make an inventory and appraisement of the estate as in other cases, but he shall leave such personal property as is ordered not to be sold, in possession of the widow or other family, who shall use and enjoy the same until the probate court shall order such property to be administered.

Suspension.

SEC. 110. If property is about to be sold in the vacation of the probate court, any judge of such probate

court has power upon the petition of the executor or administrator, or of any other person interested in the estate, to order the suspension or such sale until the next term of the probate court.

SEC. 111. In any case where the court has ordered that property shall not be sold, if it shall appear to the probate court that such property is likely to be injured or wasted, or that those interested therein would be benefited thereby, such court shall order that such estate be forthwith administered; and in such cases the rights of all persons interested shall be the same as if the order provided for in the one hundred and ninth section of this title, had not been made.

Likely to be injured.

SEC. 112. For good cause shown, the probate court may continue any matter or proceeding arising before it under this act, on such terms as it may consider just.

For good cause

Of the duties Respecting the Sale of Real Estate.

SEC. 113. The sale and conveyance of real estate under a will shall be made by the acting executor or administrator, with the will annexed, if no other person be appointed for that purpose by the will, or if such person fail to perform the trust.

Sale of real estate.

SEC. 114. If any person die, having purchased real estate, and shall not have completed the payment, nor devised such estate, nor provided for the payment by will, and the completion of such payment would be beneficial to the estate and not injurious to creditors, the executor or administrator, by order of the probate court, may complete such payment out of the assets in his hands, and such estate shall be disposed of as other real estate.

If any person die.

SEC. 115. If the court believe that after the payment of debts, there will not be sufficient to pay for such real estate, the court may order the executor or administrator to sell all the right, title, and interest of the deceased therein.

Interest of deceased sold.

SEC. 116. If such real estate has been purchased from individuals, the court may, if it believe it advantageous to the estate, order the same to be relinquished to such individ-

Estate relinquished

ual on the most advantageous terms that can be agreed upon.

Officer to accept
relinquishment.

SEC. 117. If such real estate shall have been purchased from any officer authorized by law to sell school lands, the probate court may, in its discretion, order the same to be relinquished, and in such cases the officer shall be authorized to accept of such relinquishment, and surrender the obligation of the deceased.

Redemption.

SEC. 118. If any person die, having mortgaged any real estate, or mortgaged or pledged any personal property, or owing any equity of redemption, and shall not have devised the same, or provided for the redemption of the same by will, the probate court, upon the application of any person interested, may order the executor or administrator to redeem such estate out of the personal assets, if it would be beneficial to the estate, and not injurious to the creditors.

Public sale.

SEC. 119. If such redemption would injure the estate or creditors, or there would not be assets to redeem such estate after payment of debts, the court shall order all the right, title and interest of the estate to such property to be sold at public sale.

Executor to re-
linquish, &c.

SEC. 120. In cases of relinquishment of the interest of the testator or intestate, under the provisions of the one hundred and seventeenth and one hundred and eighteenth sections of this title, and in all cases of the sale of the interest of the testator or intestate, under the one hundred and sixteenth and one hundred and twentieth sections of this title, the executor or administrator shall be competent, by deed, to make such relinquishment, or to convey to the purchaser all of the right, title and interest the testator or intestate had in and to such real estate at the time of his death.

Sale of real
estate.

SEC. 121. If any person die and not have personal estate sufficient to pay his debts, the executor or administrator shall file a petition to the probate court, stating the facts, and praying for the sale of the real estate, or so much thereof as will pay the debts.

SEC. 122. If such real estate be bound by the lien of a judgment, the executor or administrator shall state that fact in his petition, the date and amount of the judgment, and the name of the person in whose favor the same was rendered.

Lien.

SEC. 123. The proceeds of the sale of such real estate shall be first applied to the payment of such judgment, and the residue, if any, shall become assets in the hands of the executor or administrator, to be administered according to law.

Assets.

SEC. 124. If such real estate be bound by the lien of several judgments, the executor or administrator shall state that fact in his petition, the dates and amounts of such judgments, and the names of the persons in whose favor the same were rendered.

Several liens.

SEC. 125. The proceeds of the sale of such real estate shall be first applied to the payment of such judgments according to their priority of lien.

Priority of lien

SEC. 126. The residue of such proceeds, if any, shall become assets in the hands of the executor or administrator, to be administered according to law.

Assets.

SEC. 127. If the lien of such several judgments be of even date, and the proceeds of such sale shall not be sufficient to pay the whole, such proceeds shall be applied to the payment of such several judgments in proportion to their respective amounts.

Lien of even date.

SEC. 128. The petition to be filed according to the provisions of the one hundred and twenty-first section of this title, shall be accompanied by a true account of his administration, a list of the debts due to and by the deceased, and remaining unpaid, and an inventory of the real estate and of the remaining personal estate, with its appraised value, and all the other assets in his hands, the whole to be verified by the affidavit of the executor or administrator.

Petition.

SEC. 129. If such executor or administrator do not make such application, any creditor or other person interested in the estate, may make such application, giving ten days notice to the executor or administrator.

Ten days notice.

Accounts, lists,
&c., to be filed.

SEC. 130. Every such executor or administrator, on or before the first day of the term of the court at which he is notified that such application will be made, shall file with the court, perfect accounts, lists and inventories, made out and verified as those required to accompany a petition by himself. If such executor or administrator fail to comply with this section, the court shall compel him to do so by attachment.

Publication.

SEC. 131. When such petition and such accounts, lists and inventories shall be filed, the court shall order that all persons interested in the estate be notified thereof, and that unless the contrary be shown, on the first day of the next term of the court, an order will be made for the sale of the whole, or so much of such real estate, as will pay the debts of the deceased. Such notice shall be published for three weeks in some newspaper in the county if there be one, if not, by three hand-bills to be put up at three public places in the county in which the land lies, at least thirty days before the term of the court at which any such order will be made, in the discretion of the probate court.

Order for sale.

SEC. 132. Upon proof of publication, the court shall hear the testimony, and may, if necessary, examine all the parties on oath touching the application, and make an order for the sale of such real estate, or any part thereof, in this territory, at public or private sale.

Personal estate
reserved.

SEC. 133. If any executor or administrator, or other person interested in any estate, file a petition, setting forth the facts, and describing the real and personal estate, and praying that the personal estate may be reserved, and real estate sold for the payment of debts, the same steps shall be taken, and the same proceedings and publication had as above directed, upon a petition to sell real estate for the payment of debts, and the court may order the whole, or any part of the personal estate to be reserved; and the real estate, or any part of it may be sold at public or private sale.

Appraised.

SEC. 134. Before any executor or administrator shall

sell any real estate, or any interest therein by order of any court, he shall have it appraised by three disinterested householders of the county in which it lies.

SEC. 135. Such appraisers shall make an affidavit that they will, according to the best of their abilities, view and appraise the estate to them shown, and they shall view and appraise the same, and deliver to the executor or administrator, a certificate thereof, under their hands. Affidavit.

SEC. 136. In all sales of real estate made by an executor or administrator, he shall cause a notice, containing a particular description of the estate to be sold, and stating the time and place and terms of sale, to be published in some newspaper in the county for four weeks, and shall put up a copy of such notice in three public places in the county in which the sale is to be made, twenty days before the day of sale. If the probate court shall think it advisable, and so order, the publication of such notices in the newspaper may be dispensed with. Notice. Notice dispensed with.

SEC. 137. All public sales of real estate, made by order of any court for the payment of debts, shall be made at the door of the court-house or county building of the county in which such estate is situated, and shall be conducted openly by auction. Sales to be made openly.

SEC. 138. No real estate, sold for the payment of debts, shall be sold at private sale for less than three-fourths of its appraised value, nor shall the executor or administrator, directly or indirectly, become the purchaser of such real estate. Not less than three-fourths appraised value.

SEC. 139. At the next term of the probate court after such sale, the executor or administrator shall make a full report of his proceedings, with the certificate of appraisement and a copy of the advertisement, which report shall be verified by affidavit, stating that he did not, directly or indirectly, purchase such real estate, or any part thereof, or any interest therein, and that he is not interested in the property sold, except as stated in the report. Report.

SEC. 140. If such report and proceedings of the Proceedings

executor and administrator be not approved by the court, his proceedings shall be void, and the court may order a new sale, upon which the same proceedings shall be had as upon the original order.

Sale valid.

SEC. 141. If such report be approved by the probate court, such sale shall be valid, and the executor or administrator shall execute, acknowledge and deliver to the purchaser, a deed, reciting the order of sale, and the court by which it was made, the certificate of appraisement, the advertisement, the time and place of sale, the report of the proceedings, and the consideration and conveying to the purchaser, and the right, title and interest which the deceased had in the same.

Deed

SEC. 142. Such deed shall convey to the purchaser all the right, title and interest which the deceased had in such real estate at the time of his death, discharged from liability for his debts and shall be evidence of the facts therein recited.

Contract.

SEC. 143. If any testator or intestate shall have entered into contract, in writing, for the conveyance of any real estate, and shall not have executed the same in his lifetime, nor given power, by will, to execute the same, the other party, wishing a specific execution of such contract, may file a petition to the probate court, setting forth the facts, and praying that an order may be made that the executor or administrator execute such contract specifically by executing to him a deed for the same.

Affidavit.

SEC. 144. Such petitioner shall annex to his petition an affidavit to the truth thereof, and stating that no part of such contract has been satisfied, except as stated in the petition.

Notice.

SEC. 145. A notice of such application and a copy of the petition, shall be served on the executor or administrator twenty days before the first day of the term at which it is to be made.

Contract to be executed.

SEC. 146. If the court after hearing all parties, believe that specified execution of such contract ought to be made,

it shall make an order that the executor or administrator execute such contract specifically, saving to infants, married women, persons of unsound mind, and persons absent from the United States, the term of five years after their disabilities are removed, to appear and file their bill in chancery, to set aside such order for fraud or otherwise.

Five years to appear.

SEC. 147. When any order for the specific execution of a contract shall be made, the executor or administrator shall execute and deliver to the petitioner a deed, and acknowledge it in open court, conveying the estate according to the order, and expressing therein the saving of the rights above named, according to the order, and stating the date of the order, and the court at which it was made.

Deed.

SEC. 148. Such deed shall be as effectual as if it had been executed by the deceased.

Deed effectual.

SEC. 149. If any executor or administrator hold a bond, or any other instrument of writing, on the testator or intestate, for the conveyance of any real estate, which shall not have been completed within the lifetime of such testator or intestate, nor power will be given to execute the same, the executor or administrator shall proceed against his co-executor or co-administrator in the same manner as prescribed by this title in other cases; but if there be no co-executor or co-administrator, he shall file his petition as herein provided, and the court shall appoint some suitable person to appear and manage the defense on the part of those interested, who shall have all the powers and perform the same duties required of executors or administrators, in such case, by this title.

Bond for conveyance of real estate

SEC. 150. If, upon the settlement of the accounts of any executor or administrator, it appear that the personal estate is not sufficient to satisfy all demands established against such estate, the probate court may make such order as it may think necessary for the sale of the real estate for that purpose, and the sale shall be conducted, and the same proceedings had in relation thereto, as is provided in this title in relation to the sale of real estate, for the payment of

Order by probate court.

debts upon the petition of the executor or administrator, creditor or other person interested.

Of the allowance of Demands against Estates.

Classes of demands.

SEC. 151. All demands against the estate of any deceased person shall be divided into the following classes :

First, Funeral expenses and expenses of administration.

Second, Expenses of the last sickness, wages of servants, and demands for medicines and medical attendance during the last sickness of the deceased.

Third, Judgments rendered against the deceased in his lifetime; but if any such judgments shall be liens upon the real estate of the deceased, and the estate shall be insolvent, such judgments, as are liens upon the real estate, shall be paid as provided in this title, without reference to classification, except the classes of demands mentioned in the first and second subdivision of this section, shall have precedence of such judgments.

Fourth, All demands, without regard to quality which shall be legally exhibited against the estate within six months after the granting of the first letters on the estate.

Fifth, All demands thus exhibited within one year after letters granted.

Barred after one year.

SEC. 152. All demands, not thus exhibited within one year, shall be forever barred, saving to infants, persons of unsound mind, imprisoned or absent from the United States, three years after the removal of their disabilities.

Actions which survive.

SEC. 153. All actions pending against any person at the time of his death, which, by law, survive against the executor or administrator, shall be considered demands legally exhibited against such estate, from the time such action shall be revived, and classed accordingly.

Actions commenced after death.

SEC. 154. All actions commenced against such executor or administrator, after the death of the deceased, shall be considered demands legally exhibited against such estate, from the time of serving the original process on such executor or administrator.

SEC. 155. Any person may exhibit his demand against such estate, by serving upon the executor or administrator a notice, in writing, stating the nature and amount of his claim, with a copy of the instrument of writing or account upon which the claim is founded, and such claim shall be considered legally exhibited from the time of serving such notice.

Service of notice.

SEC. 156. Every executor or administrator shall keep a list of all demands thus exhibited, classing them and make return thereof to the probate court every six months, at the term at which he is to make settlement.

Returns every six months.

SEC. 157. Any person having a demand against an estate, may establish the same by the judgment or decree of some court of record, in the ordinary course of proceeding, and exhibit a copy of such judgment or decree to the probate court.

Demand, how established.

SEC. 158. The probate court shall have jurisdiction to hear and determine all demands against any estate, and a concise entry of the order of allowance shall be made on the record of the court, which shall have the force and effect of a judgment.

Jurisdiction.

SEC. 159. No probate court shall allow any demand against any estate, when the estate is indebted to any claimant, after allowing all just credits and off-sets, unless the claimant first make oath in open court, or file an affidavit with such claim, stating to the best of his knowledge and belief, he has given credits to the estate for all payments and off-sets to which it is entitled, and that the balance claimed is justly due.

Demande not allowed.

SEC. 160. No probate court shall allow any demand against any estate when the claimant is indebted to said estate, after allowing all just credits and off-sets, unless the claimant first make oath in open court, or file an affidavit with such claim, stating to the best of his knowledge and belief, he has given credits to the estate for all payments and off-sets to which it is entitled, and that his account or demand as presented, is correctly stated; and the affidavit in this

Ditto.

Affidavit.

section and the preceding one shall not be received as any evidence of the demand, but the same shall be established by competent legal testimony, before it is allowed or adjusted.

**Affidavit made
by agent.**

SEC. 161. The affidavit or oath required by the two preceding sections may be made by an agent of the claimant, when such agent has had the management and transaction of the business out of which such demand originated, or when such agent has had the means of knowing personally, the facts required to be sworn to by those sections.

Written notice

SEC. 162. Any person desiring to establish a demand against any estate, shall deliver to the executor or administrator, a written notice, containing a copy of the instrument of writing or account on which it is founded, and stating that he will present the same for allowance at the next term of the probate court.

Service of notice.

SEC. 163. Such notice shall be served on the executor or administrator ten days before the beginning of such term of the court, and may be served by the party, his agent or attorney, or by any competent witness, who shall make affidavit to such service.

Waiver of notice.

SEC. 164. The executor or administrator may appear in court and waive the service of any such notice.

**Probate court
to determine
summarily.**

SEC. 165. The probate court shall hear and determine all demands in a summary manner, without the form of pleading, and shall take the evidence of competent witnesses, or other legal evidence.

Depositions.

SEC. 166. Any person may take depositions in support of his demand, at his own expense, if he first procure the written consent of the executor or administrator, and such depositions may be taken in the ordinary manner, at such time and place as may be agreed upon, and read in evidence in support of such demand.

No jury.

SEC. 167. If the demands do not exceed twenty dollars, or if neither party require a jury, the court may decide on the validity of such demand.

**Jury, when
is joined.**

SEC. 168. If the demand exceed twenty dollars, and either party require a jury, one shall be immediately

summoned, and the trial shall be conducted in a summary manner, without the form of pleading; and when the demand is not due at the time of trial, the court or jury may adjust the same by rebating therefrom equal to the legal rate of interest on similar paper per annum from the time of trial until due.

SEC. 169. Any executor or administrator may establish a demand against his testator or intestate, by proceeding against his co-executor or co-administrator, in the manner prescribed for other persons; but if there be no co-executor or co-administrator, he shall file his claim and other papers, and the court shall appoint some suitable person to appear and manage the defence on the part of the estate.

Demand by executor against estate.

SEC. 170. When a demand shall be presented to the probate court for allowance, if the demand be allowed, the estate shall pay the costs; if disallowed, the party presenting the claim shall pay the costs.

Costs.

SEC. 171. The judge of the probate court shall keep an abstract of all judgments of other courts filed, and of all demands established in the probate court against such estate, which shall show their amount, date, class, and to whom payable.

Abstract.

SEC. 172. If any judgment of a court of record be filed in the probate court, and when demands are allowed against any estate in the probate court, such court shall determine its class, and shall make an entry thereof in his abstract, and when thus classed, the executor or administrator may satisfy such demand according to such classification.

Court to determine class.

SEC. 173. When any such demand has been allowed, the judge shall indorse, on the back thereof, the amount allowed thereon, and the class to which it belongs, and deliver the same to the demandant.

Indorsement.

SEC. 174. All demands against any estate shall be paid by the executor or administrator, as far as he has assets, in the order in which they are classed, and no demand of one class shall be paid until all previous classes be satisfied; and if there be not sufficient to pay the whole of any one

Demands, in what order paid.

class, such demands shall be paid in proportion to their amounts.

Suit within six months.

SEC. 175. If any person commence a suit of any kind, in any court; against an estate, within six months from the date of administration, he may recover judgment, but shall pay all costs.

Absence.

SEC. 176. If any executor or administrator shall temporarily absent himself from this territory, he shall appoint an agent, in writing, for whose acts such executor or administrator and his sureties shall be responsible (and file such appointment in the office of the court having jurisdiction of his testator's or intestate's estate) to whom notice of demands against his testator's or intestate's estate, as provided in this title, may be given; and upon failure to appoint such agent, such notice may be filed in the office of the court having jurisdiction of the estate.

Notice given to agent.

SEC. 177. Notice given to such agent, or filed, as aforesaid, among the papers relating to the estate against which the demand is claimed, shall be as effectual as if it had been given to the executor or administrator.

Demand improperly allowed

SEC. 178. If the executor or administrator shall within four months after any demand shall have been allowed, upon notice given as prescribed in the two preceding sections, file in the office of the court having jurisdiction of the estate, the affidavit of himself or some other credible person, stating that the affiant has good reason to believe, and does believe, that such demand has been improperly allowed, the court shall vacate such order of allowance, and try the matter anew, and allow or reject such demand, as shall be right; and if upon such new hearing, such demand shall be allowed, it shall be classed and paid as if such new hearing had not been granted.

Of the Settlement of their Accounts.

Judge of probate to keep record.

SEC. 179. The judge of each probate court shall provide well bound books, and enter therein the accounts and settlements of all executors and administrators made in

the court, in such manner as to form a complete record of all such accounts settled in that court.

SEC. 180. Every executor and administrator shall exhibit a statement of the accounts of his administration for settlement, with proper vouchers, to the probate court. at its first term after the end of six months from the date of his letters, and at the corresponding term of such court every six months thereafter, until the administration be completed.

Statements and
vouchers.

SEC. 181. The judge of the probate court shall keep a docket, and enter therein a list of all executors and administrators who have not made final settlement of their accounts, the date of their letters, and the term at which they are required to make settlement.

Docket.

SEC. 182. The judge shall put up in some conspicuous place in his office, ten days before each term, a list of the executors and administrators, whose settlements are required to be made at that term.

List.

SEC. 183. If any executor or administrator fail to present such settlement, the judge shall immediately issue a citation, to any county in the territory, requiring him to present his accounts for settlement at the next term of the probate court, and show cause why an attachment should not issue against him for not exhibiting his accounts at the term at which he was required to settle.

Failure to pre-
sent settlement.

Citation.

SEC. 184. If such citation be not served, the judge shall issue an alias citation, which may be served, or may be published in some newspaper in this territory, one month before the return thereof.

Alias citation.

SEC. 185. If, after such service or publication, no cause to the contrary be shown, such executor or administrator may be fined by the probate court, not exceeding one hundred dollars, to the use of the county, and such executor or administrator shall be liable upon his bond for failing to settle.

Fine for failure
to settle.

SEC. 186. The probate court may revoke the letters of such delinquent, and may issue attachment and other process to compel such settlement, directed to any county in the

Attachment to
issue.

territory, and in all such cases such delinquent shall pay costs.

Reasonable charges allowed.

SEC. 187. When an executor or administrator shall present his account for settlement, the probate court shall settle the same according to law, allow all reasonable charges for the expenses of administration, funeral expenses, and all disbursements and appropriations made by order of the court, and a reasonable compensation for the trouble and expenses of the executor or administrator.

Proof to be produced.

SEC. 188. Upon every settlement the executor or administrator shall show that every claim for which disbursements have been made, has been allowed by the court according to law, or shall produce such proof of the demands as would enable the claimant to recover it in a suit at law.

Money remaining to be apportioned among creditors.

SEC. 189. At every settlement, the court shall ascertain the amount of money of the estate which has come to the hands of such executor or administrator from all sources, and the amount of debts allowed against such estate; and if there be not sufficient to pay the whole of the debts and expenses of administration, the money remaining after paying the expenses of administration, shall be apportioned among the creditors, according to this act, and the court shall order that such executor or administrator pay the claims allowed by the court according to such apportionment, reserving apportionments made on claims which remain undecided, until decision be had thereon.

Debts paid or amounts exhausted.

SEC. 190. The probate court, upon every settlement, shall proceed in like manner until all the debts be paid, or the assets exhausted; and if, upon such settlement, there shall be money enough to satisfy all demands of any one class legally exhibited against such estate, the court shall order the whole to be paid.

Failure to pay

SEC. 191. If any executor or administrator fail to pay any claim thus ordered to be paid according to the two preceding sections, when demanded, the probate court, on application of such creditor, and being satisfied that such demand has been made, shall issue execution for the amount

ordered to be paid and costs, against the property, goods, chattels and real estate of such executor or administrator.

SEC. 192. If any such execution be returned unsatisfied, the creditor may sue out of the probate court an order against any one or more of the securities of such executor or administrator, referring to the bond, the order of payment, the execution and return, and requiring such security to show cause why judgment should not be rendered against him for the amount so ordered to be paid and still unsatisfied. Security to pay.

SEC. 193. Such order may be directed to, and served in any county in this territory, and if, upon the return thereof, no good cause to the contrary be shown, the court shall render judgment against such security for the amount unpaid and costs, and award execution therefor. Judgment against security.

SEC. 194. If any executor or administrator wish to make final settlement, he shall publish for four weeks in some newspaper in this territory, a notice to all creditors and others interested in the estate, that he intends to make final settlement at the next term of the court. Notice to creditors.

SEC. 195. If it appear to the court that such notice was duly published, and that the estate of the deceased has been fully administered, the court shall make final settlement, which shall be conducted as semi-annual settlements. Final settlement.

SEC. 196. At his final settlement, the court shall give credit to the executor or administrator for debts which have been charged in the inventory as due to the estate, if the court be satisfied that such debts was not really due to the estate, or that it has been balanced or reduced by off-sets in any court of competent jurisdiction, or the debtor was insolvent, or that from any other cause it was impossible for the executor or administrator to have collected such claim by the exercise of due diligence. Credit to be given executors.

Of the Distribution of the Estates..

SEC. 197. Executors and administrators shall not be compelled to make distribution, or pay legacies, until six months after the date of the letters, unless the legacies Not compelled to make distribution under x months.

specified would be perishable, or subject to injury, if retained one year.

One year.

SEC. 198. No executor or administrator shall be compelled to pay legacies or make distribution, within one year after the date of his letters, unless ordered to do so by the court, until bond and security be given by the legatee or distributee to refund his due proportion of any debt which may afterwards be established against his estate, and the costs attending the recovery thereof. But the widow shall not be required to give such bond before she receive the property selected by her under this act.

Payment of
legacies.

SEC. 199. If upon any settlement it appear that there is sufficient money to satisfy all the demands against an estate, the court shall order the payment of legacies and distribution of shares, as in the case of debts, except that specific legacies shall be first satisfied.

Sale of personal
property.

SEC. 200. If any personal property descend, and an equal division thereof cannot be made in kind, the probate court may order the sale of such personal property, (prescribing the time, place, manner and terms of sale), and cause the money to be distributed according to the rights of those entitled to distribution.

Distributees to
be notified.

SEC. 201. Each person entitled to distribution, not applying therefore, shall be notified in writing of such application ten days before such order shall be made; or if such person do not reside in this territory, a notice of such application shall be published in some newspaper in this territory, four consecutive weeks before such order shall be made.

Order of sale by
court.

SEC. 202. When such order for the sale of personal estate shall be made by the court, it shall settle the claims of the distributees, and order the person selling such property, to distribute the money arising therefrom, according to the rights of each person.

Distributee, a
purchaser.

SEC. 203. If any distributee become a purchaser of such property, his receipt for the amount of his share shall be received in payment of an equal amount of the

purchase money, and the court shall allow the amount of such receipt as so much distributed under the order of the court.

SEC. 204. If, after the payment of legacies or Money refunded. distributions, it becomes necessary that the same, or any part thereof, be refunded for the payment of debts, the court, on application, shall apportion the same among the legatees or distributees according to the amount received by them, except that specific legacies shall not be required to be refunded, unless the residue be insufficient to satisfy such debts.

SEC. 205. If any legatee or distributee fail to refund, Failure to refund. according to such order, the court shall, on motion of the executor or administrator, ten days notice in writing having been given to the legatee or distributee, enter judgment for the amount apportioned to him.

SEC. 206. The probate court, as occasion may require, Support of minors. may order such appropriations for the support of minor children of the deceased, not otherwise provided for, as will not prejudice the rights of creditors.

SEC. 207. Until the widow's portion be assigned, the court shall order such sum to be paid to her out of the rent Sum paid to widow. of real estate, as shall be in proportion to her interest in the real estate.

SEC. 208. If, upon the return of the inventory and appraisement, it appears to the court that the whole amount of the estate is not more than that to which the widow is by law entitled, without being subject to the payment of debts, and that there are no debts due the estate, or so small they would not defray the expenses of collection and of administration, the probate court may, in its discretion, make an order that such estate be delivered to the widow, and that all further advertisements, settlements and other proceedings under said administration be dispensed with, unless further estate be discovered, or the court order the administration to be proceeded with. Estate delivered to widow.

SEC. 209. If, upon final settlement, it appear that Non-residence.

any legatee or distributee is non-resident, or from any other cause is not in a situation to receive his share, and give a discharge therefor, or does not appear by himself, or agent, to receive the same, the probate court shall order the executor or administrator to lend out the money, on good security, for such limited time as the court may direct, not exceeding one year.

Money into
county treasury.

SEC. 210. In all cases when the legatee or distributee shall not appear within one year after final settlement by the executor or administrator, and claim his share, the probate court shall order the same to be paid into the county treasury.

Duplicate re-
ceipts.

SEC. 211. When any share shall be paid into the treasury, the executor or administrator shall take from the treasurer duplicate receipts, one of which he shall retain, and file the other with the judge of the probate court, ordering the share to be paid into the treasury, and the court shall credit the executor or administrator therewith.

Certificate on
the treasury.

SEC. 212. When any legatee or distributee shall appear and claim any share paid into the treasury, the probate court before whom the final settlement was made, being first satisfied of his right, shall grant him a certificate, under its seal; and on presentation of the certificate to the treasurer, he shall pay him the amount.

Personal prop-
erty to be sold.

SEC. 213. If, after the expiration of one year after the final settlement, there should remain in the hands of the executor or administrator, any personal property unclaimed by the legatees or distributees, the court shall order the same to be sold and the proceeds paid into the county treasury; and the same may be drawn therefrom in the manner provided in the preceding section.

Disposition of
property of non-
residents.

SEC. 214. When administration shall be taken in this territory on the estate of any person who, at the time of his decease, was an inhabitant of any other state or country, his real estate found here, after the payment of his debts, shall be disposed of according to his last will, according to the laws of this territory, and his personal estate, according

to his last will, according to the laws of his domicil; and if there should be no such will, his real estate shall descend according to the laws of this territory, and his personal estate shall be distributed and disposed of, according to the laws of the state or country of which he was an inhabitant.

SEC. 215. Upon the final settlement of such an estate, and after the payment of all debts for which the same is liable in this territory, the residue of the personal estate, if any, may be distributed and disposed of in manner aforesaid, by the probate court in which the estate is settled, or may be transmitted to the executor or administrator, if there be any in the state or country where the deceased had his domicil, as the court, under the circumstances, shall think best.

Final settle-
ment.

SEC. 216. If such deceased person died insolvent, his estate found in this territory shall, as far as practicable, be so disposed of that all his creditors here and elsewhere may receive an equal share, in proportion to their respective debts.

Insolvent.

SEC. 217. To this end, his estate shall not be transmitted to the foreign executor or administrator, until his creditors, who are citizens of this territory, shall have received their just proportion that would be due to them if the whole of the estate of the deceased wherever found, were divided among all the said creditors in proportion to their respective debts, without preferring any one species of debt to another.

Citizens to have
procedure.

SEC. 218. In such case, no creditor, not being a citizen of this territory, shall be paid out of the assets found here, until those who are citizens shall have received their just proportion as provided in the preceding section.

Ditto.

SEC. 219. If there be any residue after such payment to the citizens of this territory, the same may be paid to any other creditors who shall duly have proved their debts here, in proportion to the amount due to each of them respectively.

Residue.

SEC. 220. No one shall receive more than would be

due to him if the whole estate were divided ratably among all the creditors.

Balance, how
distributed.

SEC. 221. The balance, if any, may be transmitted to the foreign executor or administrator, or, if there be none such, it shall, after the expiration of one year from the appointment of the administrator, be distributed ratably among all the creditors, citizens and others, who shall have proved their debts in this territory.

Compensation.

SEC. 222. Executors and administrators shall be allowed for their trouble not exceeding ten per centum on the whole amount of personal estate, and on the money arising from the sale of lands, with such additional allowance for leasing real estate and collecting and preserving the estate, as the probate court shall deem reasonable.

Of Proceedings Against Executors, Administrators and Securities.

Inquiry.

SEC. 223. If, upon the settlement of any executor or administrator, there be not sufficient assets to pay all the demands against the estate, any creditor may suggest that he has not made a just account of the assets in his hands, and apply for an inquiry into the same.

Time to be
made,

SEC. 224. Upon such application, the court shall direct an issue to be made up, whether there be waste or not, which shall be tried as demands against an estate.

Costs.

SEC. 225. If no waste be found, the applicant shall pay the costs; but if waste be found, judgment shall be recorded in favor of the applicant against such executor or administrator, of his own proper estate, for the amount wasted, and costs, and the money collected shall be applied to the payment of the debt due to the applicant, and the residue shall be apportioned among the creditors.

Amount recov-
erable.

SEC. 226. If it appear that such waste was committed wilfully and fraudulently, the applicant shall recover double the amount wasted, with costs, to be apportioned as aforesaid.

Suit on bond.

SEC. 227. After final settlement of any estate found to be insolvent, any creditor, or other person intrusted therein,

may bring a suit on the administration bond, and assign and prove, as a breach of the condition, any waste or mismanagement of the estate, and have judgment against the executor or administrator for the whole value of the assets wasted or mismanaged, as he could have done if they had been regularly accounted for, with costs.

SEC. 228. Upon such judgment, execution may issue against the private estate of such executor or administrator, and his settlement shall only be conclusive so far as he has applied the assets, pursuant to the apportionment made by the court for the payment of debts. Execution.

SEC. 229. The proceeds of all executions, or any judgments thus recovered, shall be applied to the payment of the debt due to the person suing, and the residue shall be apportioned among the creditors. Proceeds, how applied.

SEC. 230. The bond of an executor or administrator may be sued on, at the instance of any party injured, in the name of the territory, to the use of such party for the waste or mismanagement of the estate, or other breach of the condition of such bond and the actual waste or damage shall be assessed thereon. Who may sue.

SEC. 231. The probate court, for disobedience to any order made in pursuance of this act, may issue attachment, imprison the body, or proceed by sequestration of lands and goods, as fully as a court of chancery may do, and may issue their process for that purpose, directed to any county, and cause it to be served therein. Attachment.

Of Appeals.

SEC. 232. Appeals shall be allowed from the decision of the probate court to the district court, in the following cases : Appeals, on what taken.

First, On all demands against an estate exceeding ten dollars.

Second, On all settlements of executors and administrators.

Third, On all apportionments among creditors, legatees or distributees.

Fourth, On all orders directing the payment of legacies, making distribution, or making allowances to the widow.

Fifth, On all orders for the sale of personal estate, because distribution cannot be made in kind.

Sixth, On all orders for the sale of real estate.

Seventh, On judgments for waste.

Eighth, On proceedings to recover balances escheated to the territory or county.

Ninth, On revoking letters testamentary or of administration.

Tenth, On orders making allowances for the expenses of administration.

Eleventh, On orders for the specific execution of contracts.

Twelfth, On orders compelling legatees or distributees to refund, and in all other cases where there shall be a final decision of any matter arising under the provisions of this act.

When taken.

SEC. 233. All appeals shall be taken during the term at which the decision complained of is made, or within ten days after the making of such decision. Notice of such appeal shall be given in open court and entered on the record, or by written notice to the opposite party.

Affidavit.

SEC. 234. The applicant for such appeal, his agent or attorney, shall file an affidavit that the appeal is not taken for the purpose of vexation or delay, but because the affiant believes that the appellant is aggrieved by the decision of the court.

Bond.

SEC. 235. Every such appellant shall file in the court the bond of himself or some other person, in a sum with security approved by the court, conditioned that he will prosecute the appeal, and pay all debts, damages and costs that may be adjudged against him. This act shall not be so construed as to require any executor or administrator to enter into bond in order to entitle him to an appeal.

Appeal not a
general superse-
deas.

SEC. 236. After such affidavit and bond have been filed, the appeal shall be granted, but shall not be a super-

seeds in any other matter relating to the administrator of the estate, except that from which the appeal is specially taken.

SEC. 237. When such appeal is taken, the judge shall Transcript. transmit to the clerk of the district court, a certified transcript of the record and proceedings relating to the cause, together with the original papers in his office relating thereto.

SEC. 238. Upon the filing of such transcript and District how proceed. papers in the office of the clerk of the district court, the court shall be possessed of the cause, and shall proceed to hear, try and determine the same, and without regarding any error, defect or other imperfection in the proceedings of the probate court.

SEC. 239. The clerk of the district court shall certify a Clerk to certify. transcript of the record and proceedings, and the original papers to the court whence the appeal was taken, who shall proceed according to the decision of the district court.

This act to take effect and be in force from and after the first day of January, one thousand eight hundred and seventy.

Approved, December 10th, 1869.

SCHOOLS.

CHAPTER 7.

AN ACT PROVIDING FOR THE ORGANIZATION OF SCHOOL DISTRICTS, SCHOOLS
AND FOR OTHER PURPOSES.

*Be it enacted by the Council and House of Representatives of
the Territory of Wyoming, as follows:*

TITLE I.

Superintendent of Public Instruction.

SEC. 1. The territorial auditor shall be *ex officio* super- Auditor ex-
officio superin-
tendent. intendent of public instruction, and shall perform all the duties which by this act or any law of the territory, pertain

Salary.

to that office. He shall be paid annually out of the territorial treasury, the sum of five hundred dollars in full for the performance of his duties as such superintendent of public instruction.

Duties of superintendent.

SEC. 2. The duties of superintendent of public instruction shall be as follows: He shall file all papers, reports and public dockets transmitted to him by the school officers of the several counties each year, separately, and hold the same in readiness to be exhibited to the governor, or to any committees of either house of the legislative assembly; and shall keep a fair record of all matters pertaining to the business of his office. He shall have a general supervision of all the district schools of the territory, and shall see that the school system is as early as practicable, put into uniform operation; and shall recommend to the several school districts an uniform series of text-books to be used in the schools thereof. He shall prepare and have printed, suitable forms for all reports required by this act, and shall transmit the same, with such instructions in reference to the course of studies as he may judge advisable, in the several officers entrusted with their management and care. He shall make all further rules and regulations that may be necessary to carry the law into full effect, according to its spirit and intent, which shall have the same force and effect as though contained herein. He shall cause so many copies of this act, with the forms, regulations, and instructions herein contemplated thereunto annexed, to be from time to time printed and distributed among the several school districts of the territory, as he shall deem expedient. He shall make a report to the legislative assembly on the first day of each regular session thereof, exhibiting the condition of public schools, and such other matters relating to the affairs of his office as he may think proper to communicate. He shall make an equal distribution of the school funds among the several counties, on the first Monday in December, according to the aggregate number of the days attendance of the scholars attending the common schools, in the several counties,

as reported by the county superintendent of each county, who shall make report of the same on or before the first Monday in November to the superintendent of public instruction.

SEC. 3. One copy of all books, maps, charts or school apparatus, which may be received by the superintendent of public instruction from publishers, inventors or manufacturers, shall be placed by him in the public library of this territory.

Disposition of books, maps, &c.

TITLE II.

County Superintendent of Schools.

SEC. 1. The duties of the county superintendent of schools shall be as follows: He shall on the first Monday of November of each year, transmit to the superintendent of public instruction, a report containing an abstract of the several particulars set forth in the reports of the district clerks, together with a statement of the financial affairs of his office, and such suggestions as he may think proper to make relative to the schools of his county. He shall keep an accurate account of the receipts and expenditures of his office, and shall render accounts current thereof at any time when required by the superintendent of public instruction. He shall take receipts for all moneys paid out in a book provided for that purpose; file all orders and warrants drawn on him by the respective directors of the district boards, and all other papers transmitted to him pertaining to the business of his office; and shall hold the same, subject to the inspection of the superintendent of public instruction, or any of the school officers of his county. He shall keep a correct account of all moneys received from the county officers, specifying the peculiar source from which the same accrued. He shall distribute to the district officers within his county such blank forms, circulars and other communications as may be transmitted to him for that purpose by the superintendent of public instruction. On the first Monday in December annually, he shall apportion the county school tax, and all money in his hands appropriated for the support

Duties of county superintendent.

of the schools, among the several school districts of his county, in proportion to the number of persons reported to him by the respective district clerks, and shall record a statement thereof in his office. He shall immediately notify the director of each school district of the amount to which his district may be entitled by said apportionment, and shall pay the same over to the district treasurer, upon the warrant of the president, countersigned by the clerk. He shall divide the settled parts of the county into school districts, and may alter and change the boundaries of districts thus formed from time to time as the convenience of the inhabitants of the aforesaid districts may require; and shall proceed to make such change at any time when petitioned by two-thirds of the legal voters of any district. He shall examine all persons offering himself or herself as teacher of public schools, and if, in his opinion, such person is qualified to teach a public school, shall give him or her a certificate, authorizing him or her to teach a public school in his county for one year; whenever practicable, the examination of teachers shall be [competitive, and the certificate shall be] graded according to the qualifications of the applicant. He shall have the general superintendence of the schools in his county, and shall visit each school at least twice each term, and shall have power to dismiss all teachers he may find to be incompetent.

Failure.

SEC. 2. Should he fail to make his reports, as required in the foregoing section, he shall forfeit the sum of one hundred dollars, and suit shall be brought on his official bond for the collection of the same, with damages by the prosecuting attorney.

May administer
oath.

SEC. 3. In all cases when it shall be necessary to administer any oath or affirmation, under the provisions of this act, or any other law pertaining to the duties of the county superintendent, he is hereby authorized to administer the same.

TITLE III.

School Tax.

SEC. 1. The county commissioners shall at the time of levying the tax for county purposes, caused to be levied a tax for the support of schools within the county, of not more than two mills on the dollar, of the assessed value of all taxable value, real and personal, within the county, which shall be collected by the county collector, at the same time and in the same manner as territorial and county taxes are collected, except that it shall be receivable in cash or warrants of the school.

Tax to be collected by county collector.

SEC. 2. The county treasurer shall at all times hold, subject to the draft of the proper officers, all money belonging to the teachers or school house funds.

Money to be subject to draft of officers.

TITLE IV.

1. *School Districts.* 2. *Organization Powers.*

SEC. 1. Upon the formation of a new school district, the county superintendent shall notify some qualified voter thereof, by written notice, describing the boundaries of the district, and also the time and place of the first meeting.

Superintendent to notify.

SEC. 2. Such qualified voter shall notify each elector in the district of the same, by personal service, as far as convenient, and shall post a notice at the place of meeting, and also in three other public places in the district, stating the boundaries of the district and the time and place of meeting, at least six days before the time of such meeting. All citizens over the age of twenty-one years, who have resided for thirty days within such district, and who are liable to pay a school tax therein, and none others, shall be deemed qualified electors at school meetings held within such district; *Provided*, That after the first year of the organization of any school district no person shall be deemed a qualified elector at any such meeting, who being liable to pay a school tax therein, in the year preceding, hath failed to pay the same.

Duty of person notified.

Who deemed electors.
Provided.

Proceedings.

SEC. 3. The qualified electors of the district when assembled in accordance with the notice required in the foregoing section, shall organize by appointing a chairman and secretary who shall act as judges of the election, and the name of each elector shall be recorded by the secretary. They shall then by ballot, elect one director, one clerk, and one treasurer, who shall constitute a board of directors for the district, and shall hold their offices until the next succeeding annual district election, and until their successors are elected and qualified.

Directors to
take oath.

SEC. 4. Said directors shall, within ten days after their election, appear before some justice of the peace, and take an oath for the faithful performance of their duties; and in case they fail to do so, they shall each forfeit the sum of twenty-five dollars for the use of the school district.

Each district a
body corporate.

SEC. 5. Each school district formed under the provisions of this act, is hereby declared to be a body corporate by the name and style of school district No. —, in the county of —, and territory of Wyoming; and in that name it may hold property, and be a party to suits and contracts.

Regular meet-
ings.

SEC. 6. The regular meeting of each school district shall be held on the first Monday of May and October of each year. And when present, the director and clerk shall preside as chairman and secretary of such meeting.

Powers.

SEC. 7. The qualified electors of the district, when assembled, shall have power :

First, To appoint a chairman and secretary, in the absence of the regular officers.

Second, To adjourn from time to time, as occasion may require.

Third, To determine the number of schools which shall be established in the district, and the length of time each shall be taught.

Fourth, To fix the site of each school house taking into consideration in doing so, the wants and necessities of the people of each portion of the district.

Fifth, To lay such tax on the taxable property of the

district as the meeting shall deem sufficient, for any of the following purposes: To supply any deficiency in the fund for the payment of teachers; to purchase or lease a suitable site for a school house, or school houses; to build, rent, or purchase a school house, or school houses, and to keep in repair and furnish the same with the necessary fuel and appendages; for procuring libraries for the schools, books and stationery for the use of the board, and district meetings; and to defray all other contingent expenses of the district.

Sixth, To direct the sale or other disposition to be made of any school house, or the site thereof, and of such other property, real or personal, as may belong to the district; and to direct the manner in which the proceeds arising therefrom shall be applied.

Seventh, To determine what branches of learning shall be taught in the schools of their districts.

Eighth, To delegate any or all of the powers contained in the foregoing specifications to the district board.

Ninth, To transact generally such business as may tend to promote the cause of education, in accordance with the provisions of this act.

SEC. 8. In levying a tax, the district meetings shall designate the respective objects for which the same is raised, and the amount to be raised for each object, and the aggregate amount shall be assessed and collected, as provided in this act. Tax, how levied.

SEC. 9. They may adopt rules of order, not incompatible with the provisions of this act and the instructions of the superintendent of public instruction, for the government of district meetings, and may alter and change the same from time to time as occasion may require, and may prescribe the manner of taking the sense of the meeting upon any question; *Provided*, that the last specification shall not apply to the selection of officers. Rules.

SEC. 10. In all cases where there are moneys belonging to the school house fund, remaining in the hands of the district treasurer of any school district, and the board of Transfer of moneys.

directors thereof are satisfied that such moneys are not required to build a school house, or school houses, in said district, or repair or furnish the same, such moneys may be transferred and accredited to the teachers fund, and applied to the payment of teachers.

Election of
officers.

SEC. 11. There shall be elected in each organized school district, at the regular district meeting, on the first Monday in May of each year, one director, one clerk, and one treasurer of the district, who, together, shall constitute a board of directors for the district, and shall hold their offices for one year, and until their successors are elected and qualified. If for any cause the annual election should not be held at the regular meeting, a special meeting for that purpose may be held

Directors, how
to qualify.

SEC. 12. Said directors shall qualify in the manner prescribed in the preceding title for directors elected upon the formation of a new school district; and in case they neglect or refuse so to do, they shall be subject to the same penalty.

Meetings.

SEC. 13. The board of directors may hold such regular, special, or adjourned meetings as they may, from time to time determine.

Powers of dis-
trict board.

SEC. 14. The district board shall make all contracts, purchases, payments and sales, necessary to carry out every vote of the district, for procuring any site for a school house, renting, repairing or furnishing the same, and disposing thereof, or for keeping a school therein, and performing such other duties as may be delegated to them by the district meeting.

Pupils from
other districts.

SEC. 15. They may, with the concurrence of the board of directors of an adjoining district or districts, admit pupils from either of said districts to a school within their own district; but said pupils shall be enumerated in their respective districts, and the portion of the school money to which they may be entitled by said enumeration shall be applied to the support of said school. The parents or guardians of said pupils shall pay such portion of the

contingent expenses, and the amount to be contributed by voluntary subscription for the support of said school, as the board may deem equitable.

SEC. 16. The district board shall require the clerk and treasurer each to give bond to the district in such penalties, and with such securities as, in their opinion, will secure the district against any loss, conditioned for the faithful application of all moneys which may come into their hands by virtue of their respective offices; said penalty may be increased from time to time, as the interest of the district may require. The bond shall be filed with the director of the board, and in case of a breach of the condition thereof, he shall bring suit thereon in the name of the district.

Clerk treasurer
to give bonds.

SEC. 17. In each organized district, they shall act as judges of all district elections.

Judges of elec-
tions.

SEC. 18. They shall from time to time examine the books and accounts of the treasurer, and make settlement with him, and shall, at each regular meeting of the district, present to the same a full statement of the receipts and expenditures of the district, and such other matters as may be deemed important.

Accounts and
settlements.

SEC. 19. They shall appoint a committee from their own body to visit the respective schools of the district monthly, and to aid the teachers in establishing and enforcing rules for the government of schools, and see that the teachers keep a correct list of the pupils, the time which they attend school, the branches of learning which each is studying, and such other matters as may, in the opinion of the board, tend to promote the welfare of the school.

Committee to
examine schools.

SEC. 20. They shall audit and allow all just claims against the district, and the directors shall draw an order for all demands thus audited, on the district treasurer.

Board to audit
claims.

SEC. 21. They shall, upon the written request of five legal voters of the district, or whenever they deem it expedient, call special meetings thereof; but in all such cases, the notice of such meeting shall clearly state the

Special meet-
ings.

precise object for which it is called, and the time and place at which it is to be held.

Filling vacan-
cies.

SEC. 22. Should a vacancy occur in the board, they may fill the same by appointment, unless it is deemed expedient to call a special meeting of the district for the purpose.

Higher schools.

SEC. 23. The county superintendent and district board of directors may determine whether a school of a higher grade shall be established in the district, the number of teachers to be employed, and the course of instruction to be pursued therein, and the board may erect for the purpose one or more permanent school houses, and shall cause such classification of the pupils as they may deem necessary, but in selecting the site for such school house, or school houses, the permanent interest and future welfare of the people of the entire district shall be consulted.

Colored schools.

SEC. 24. Where there are fifteen or more colored children within any school district, the board of directors thereof, with the approval of county superintendent of schools, may provide a separate school for the instruction of such colored children.

Employing and
paying teachers.

SEC. 25. The district board shall employ all teachers necessary for the schools of the district, and pay them by draft on the treasurer, but they must not overdraw the amount due from teachers' fund; and when there are not sufficient funds in the hands of the treasurer for the payment of such teachers, the balance shall be paid by the persons sending pupils, in such manner as may be agreed upon by the teachers and the district board.

TITLE V.

District Officers—Their Duties.

Duties of di-
rector.

SEC. 1. The director, when present, shall preside at all meetings of the board and of the district, sign all orders on the treasury for the payment of money, and shall draw all drafts upon the county superintendent for money apportioned to his district.

SEC. 2. All drafts and orders drawn on the district treasurer, as required in the foregoing section, shall specify the fund on which they are drawn, and the use for which the money is designed, and shall be countersigned by the district clerk.

Drafts and orders.

SEC. 3. The director shall appear in behalf of his district, in all suits brought by or against the same; but when he is individually a party, this duty shall be performed by the clerk.

Suits.

SEC. 4. The clerk shall record all proceedings of the board, and of the district meetings, in separate books, to be kept for that purpose; he shall preserve copies of all reports made to the county superintendent; shall file all papers, transmitted to him by other school officers, pertaining to the business of the district; and shall countersign all drafts, warrants, and orders drawn by the director.

Duties of clerk.

SEC. 5. He shall, between the first and fifteenth days of September, of each year, take and keep and record a list of the names of all persons in the district between the ages of five and twenty-one years, and shall deliver a copy of the same to the principal teacher of each school in the district.

List of scholars.

SEC. 6. He shall keep an accurate account of all the expenses incurred by the district, and shall present the same to the district board, to be audited and paid, as herein provided, out of the school fund.

Accounts.

SEC. 7. He shall give ten days previous notice of all regular and special meetings of the district, as herein authorized, by posting up a written notice in three different places therein; and shall furnish a copy of the same to the teachers of each school in the district, to be read once in the presence of the pupils thereof.

Ten days notice of meetings.

SEC. 8. The district clerk shall on the first Monday of October, in each year, submit a report to the county superintendent, for the year past then ending, of the number of schools taught in such district, the number of days each scholar attended the same, and the aggregate number of days

Report.

of attendance of said schools respectively, as certified by the teachers of the several schools of such district.

Report.

SEC. 9. On the first day of October of each year, he shall make out and file in the office of the county superintendent a report of the affairs of the district, containing:

First, The number of persons between the ages of five and twenty-one years.

Second, The number of schools, and the branches taught in each.

Third, The number of pupils in each school.

Fourth, The number of teachers employed in each school and the average compensation of each per month.

Fifth, The number of days the school has been taught, and by whom.

Sixth, The average cost of tuition for a pupil per month in each school.

Seventh, Books used in each school.

Eighth, The number of volumes in the library of each school.

Ninth, The aggregate amount paid teachers during the year, the source from which the same was received, (and the amount of the teachers' fund in the hands of the treasurer.)

Tenth, The number of district school houses, and the cost of each.

Eleventh, The amount raised in the district by tax for the erection of school houses, and for other purposes authorized in this act, and such other information as he may deem useful.

Forfeiture.

SEC. 10. Should the clerk fail to file his reports as above directed, he shall forfeit the sum of twenty-five dollars, and shall be liable to make good all loss resulting to the district from such failure; suit to be brought in both cases by the director in the name of the district on his official bond.

Duties of treasurer.

SEC. 11. The treasurer shall have the custody of all moneys belonging to the district, and shall pay out the same upon the order of the [director,] countersigned by the secretary, and shall keep an account of the receipts and

expenditures thereof in a book provided for that purpose.

SEC. 12. The moneys for the payment of teachers shall be called the "teachers' fund," and the treasurer shall keep distinct and separate accounts with them, and no warrant for money shall be paid by the treasurer which does not specify the fund on which it is drawn, and the specific use to which it is to be applied.

Teachers' fund.

SEC. 13. The school house fund shall consist only of taxes collected in the district; and all other school moneys belonging to the district shall go to the teachers' fund, and shall be applied to no other use except to pay the wages of school teachers in the district.

School house fund.

SEC. 14. The treasurer shall apply for and receive all money apportioned to the district by the county superintendent when notified of said apportionment.

Treasurer to receive money.

SEC. 15. He shall render a statement of the finances of the district, as shown by the records of his office, at any time when required by the district board.

Statement of finances.

TITLE VI.

Collection of Taxes.

SEC. 1. Whenever a tax has been voted by the district, the clerk shall, under the supervision of the director, make out and certify over his official signature, the amount of tax voted in his district, and on or before the first Monday of August in each year, [and] cause the same to be filed in the office of the clerk of the board of county commissioners.

Clerk certify amount of tax voted.

SEC. 2. It shall be the duty of the board of county commissioners to see that the amount of tax so voted be extended by the clerk in making out the annual tax list, and that said tax be levied upon the property of such district returned by the county assessor; *Provided*, That the county commissioners shall have power to increase or diminish the aggregate amount of tax of any school district as to the members of said board shall seem necessary and proper.

Tax to be levied on property of district.

Provided.

SEC. 3. In case the board of county commissioners shall, for any reason, fail in any manner in passing upon the

Failure of county commissioners to act.

justice of increasing or diminishing the amount of school tax, as provided in the next preceding section, or to perform any other duty prescribed by such section, it shall still be the duty of the clerk of the board of county commissioners to extend the amount of school tax reported to him as having been levied by the several school districts, against the assessed valuation of property in such school districts.

Collected like
county taxes.

SEC. 4. The taxes and assessments of all school districts, for all purposes, except as otherwise specially provided by law, shall be collected like county taxes, and all delinquent taxes shall be returned by the collector in the same manner as other delinquent taxes are required by law to be returned.

Paid to county
treasurer.

SEC. 5. The amount of tax collected by the county collector shall be paid over to the county treasurer, like other taxes, and shall be held by said county treasurer subject to the order of the director of the proper district, and shall be paid over accordingly.

TITLE VII.

Miscellaneous Provisions.

Arbitrators.

SEC. 1. In all cases where the alteration of school districts, as provided in this title, gives rise to controversy respecting the adjustment of the rights and liabilities of the districts affected, upon which they cannot agree amicably, the matter shall be settled by arbitrators appointed by the county superintendent.

Suits, counsel
to be employed.

SEC. 2. In all cases where suits may be instituted by or against any of the school officers contemplated or created by this title, to enforce any of the provisions herein contained, counsel may be employed, if necessary, by the officer instituting the suit, and the expense of the suit shall be borne by the district, county or territory in whose name, or against whom, the same may be instituted.

Fines, penal-
ties, &c.

SEC. 3. All fines, penalties and forfeitures provided by this title may be recovered by action of debt, in the name of the people of the territory of Wyoming, for the use of the

proper school district or county, and when they accrue, belong to the respective districts or counties in which the same may have accrued; and the district treasurer for their districts and the county commissioners of their counties are hereby authorized to receive and apply the proceeds of such forfeitures as the interest of the permanent fund is now or may hereafter be applied.

SEC. 4. Any officer or person collecting or receiving ^{Refusal to pay over fines, &c., how punished.} any fines, forfeitures or other moneys, and refusing and failing to pay over the same as required by law, shall forfeit double the amount so withheld, and interest thereon; at the rate of five per cent. per month, during the time of so withholding the same.

SEC. 5. All funds arising from a breach of the penal ^{Funds to be kept separate.} laws shall be kept and apportioned separate and apart from all other school funds.

SEC. 6. Each and every officer created by the provisions ^{Fine.} of this title who shall receive, by virtue of his office, any books or papers, and shall refuse to deliver the same to his successor in office, or shall wilfully mutilate or destroy the same, or any part thereof, shall be liable to a fine of not less than fifty nor more than three hundred dollars, to be recovered, with damages, on their respective official bonds.

SEC. 7. Every superintendent of common schools in ^{Compensation.} this territory shall be allowed such compensation as shall be fixed by the county commissioners, to be paid out of the county treasury of his county, for the performance of his duties, in addition to other expenses incurred in purchasing books, stationery, &c., necessary to said office; an account of which expense shall be made out by him quarterly and signed and sworn to, and laid before the county commissioners at their quarterly meetings, who, after examining the same, if found correct, shall issue on the county treasury, warrants for the amount due.

SEC. 8. Every teacher of common schools, employed ^{Teacher to keep schedule.} under the provisions of this title, shall keep a schedule of the names of all the scholars attending such school, the

number of days each scholar attends, and the aggregate number of days of attendance at such school, with a certificate attached thereto, that said schedule is in all its specifications true and correct; which schedule and certificate he shall deposit with the district clerk, at the expiration of the term of said school.

Both sexes to
receive the same
pay.

SEC. 9. In the employment of teachers, no discrimination shall be made in the question of pay on account of pay [sex] when the persons are equally qualified.

SEC. 10. This act shall take effect and be in force from and after its passage.

Approved 10th December, 1869.

CORPORATIONS.

CHAPTER 8.

AN ACT TO CREATE AND REGULATE CORPORATIONS.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

TITLE I.

Who may form
corporations.

SEC. 1. At any time hereafter, any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, chemical, merchandizing or mechanical business; construct wagon roads, railroads, telegraph lines, dig ditches, build flumes, run tunnels, or carry on any branch of business designed to aid in the industrial or productive interests of the country, may make, sign, and acknowledge before some officer competent to take the acknowledgment of deeds, duplicate certificates in writing, in which shall be stated the corporate name of said company, and the object for which the company shall be formed, the amount of capital stock of the said company, the term of its existence, not to exceed fifty years,

Certificate,
what it must
state.

the number of shares of which the said stock shall consist, the number of trustees, and their names, who shall manage the concerns of the said company for the first year, and the name of the town and county in which the operations of the said company shall be carried on, and shall file one of said certificates in the office of the county clerk of each county wherein the business of the company is to be carried on, and one thereof in the office of the secretary of the territory. The county clerk shall record said certificate in a book kept by him in his office for that purpose.

SEC. 2. When the certificate shall have been filed as aforesaid, with the secretary of the territory, he shall record and carefully preserve the same in his office, and a copy thereof duly certified by the secretary of the territory, under the great seal of the territory of Wyoming, shall be evidence of the existence of such company; and the persons who shall have signed and acknowledged the same, and their successors shall be a body politic and corporate in fact and in name, by the name stated in such certificate, and by that name have succession, and shall be capable of suing and being sued in any court of law or equity in this territory, and they and their successors may have a common seal, and may make or alter the same at pleasure, and they shall, by their corporate name, be capable in law of acquiring by purchase, pre-emption, donation or otherwise, and holding or conveying by deed or otherwise, any real or personal estate whatever, which may be necessary to enable the said company to carry on their operations named in the certificate.

Certificate to
be evidence.

SEC. 3. Any certificate hereafter filed and recorded under the provisions of this article, may designate one or more places where the company may carry on its business.

One or more
places to carry on
business.

SEC. 4. If any company shall be formed under this article for the purpose of carrying on any part of its business in any place outside of this territory, the certificate shall so state, and shall also state the name of the town and county in which the principal part of the business of said company,

Principal place
of business.

within this territory, is to be transacted, and said town and county shall be deemed the town, place and county in which the operations and business of the company are to be carried on, and its principal place of business, within the meaning and provisions of this article.

Trustees, who
and how chosen.

SEC. 5. The stock, property and concerns of such company shall be managed by not less than three nor more than nine trustees, who shall respectively be stockholders in said company, and who shall (except the first year) be annually elected by the stockholders, at such time and place as shall be directed by the by-laws of the company; and public notice of the time and place of holding such elections shall be published not less than ten days previous thereto, in the newspaper printed nearest to the place where the operations of the said company shall be carried on, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy, provided one-half the stock is represented; all elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the said company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees by death, resignation or otherwise, it shall be filled for the remainder of the year, in such manner as shall be provided by the by-laws of the said company.

Failure to elect
on day designa-
ted.

SEC. 6. In case it should happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company, when it ought to have been made, the company for that reason shall not be dissolved, but it shall be lawful on any other day to hold an election for trustees in such manner as shall be provided for by the said by-laws, and all acts of trustees shall be valid and binding as against such company until their successors shall be elected.

Officers.

SEC. 7. There shall be a president of the company who shall be designated from the number of trustees, and also such subordinate officers as the company, by its by-laws

may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their offices as the company by its by-laws may require.

SEC. 8. It shall be lawful for the trustees to call in Payments. and demand from the stockholders respectively, all such sums of money by them subscribed, at such time and in such payments or instalments as the trustees shall deem proper, not to exceed ten per cent. in any one month, under the penalty of forfeiting the shares of stock subscribed for, and for all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand, or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest the place where the business of the company shall be carried on as aforesaid.

SEC. 9. The stockholders of such corporation, or the By-laws, by whom made. trustees, if the certificate of incorporation so provide, shall have power to make by-laws as they shall deem proper for the management and disposition of the stock and business affairs of such company, not inconsistent with the laws of this territory, and prescribing the duties of officers, artificers and servants that may be employed; for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company.

SEC. 10. The stock of such company shall be deemed Sto. k, personal estate. personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company, but no shares shall be transferable until all previous calls thereon shall have been fully paid in, or shall have been declared forfeited for the non-payment of calls thereon, and it shall not be lawful for such company to use any of their funds for the purchase of any stock in any other corporation, nor for Company not to purchase stock. the purchase of stock in their own company or corporation, in the corporate name, nor shall such company or corporation acquire or hold any stock or share therein, except such as may be forfeited for the non-payment of assessment thereon.

Copy of any
certificate evi-
dence.

SEC. 11. The copy of any certificate of incorporation filed and recorded in pursuance of this article, certified by the secretary of the territory, under the great seal of the territory of Wyoming, to be a true copy, and the whole of such certificate shall be received in all courts and places as *prima facie* evidence of the facts therein stated.

Stockholders
liable.

SEC. 12. All the stockholders of every company incorporated under the provisions of this article, shall be severally, individually liable to the creditors of the company in which they are stockholders, to the amount of unpaid assessments on capital stock held by them respectively, and to no other or further amount, for all debts and contracts made by such company, until the whole amount of assessments on capital stock, fixed and limited by the trustees, shall be paid in, and the assessment on capital stock as fixed and limited by the trustees, shall all be paid in—ten per cent. thereof within one year, and the balance shall be payable in instalments, as shall be required by the trustees, who shall give six weeks notice, by publication, of the time and place for the payment of the same.

Trustees to
issue stock, when.

SEC. 13. The trustees of such company may purchase mines, manufactories and other property necessary for their business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and taken to be full stock, and not liable to any further calls, neither shall the holders thereof be liable to any further payments under the provisions of the tenth section of this article, but in all statements and reports of the company, this stock shall not be stated or reported as being issued for cash paid into the company, but shall be reported in this respect according to the facts.

Certificate.

SEC. 14. The president and a majority of the trustees, within thirty days after the payment of the last instalment of the capital stock so fixed and limited by the company, shall make a certificate stating the amount of the capital so fixed and paid in; which certificate shall be signed and sworn to by the president and a majority of the trustees, and

they shall, within the said thirty days, record the same in the office of the register of deeds of the county wherein the business of the said company is carried on.

SEC. 15. If the trustees of any such company shall declare and pay any dividend when the company is insolvent, or any dividend, the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted while they shall respectively continue in office; *Provided*, That if any of the trustees shall object to the declaring of such dividend or to the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objection in writing, with the clerk or secretary of the company, and with the register of deeds within the county, they shall be exempt from the said liability.

Not to pay dividends when insolvent.

Proviso.

SEC. 16. No person holding stock in any such company as executor, administrator, guardian or trustee, and no such person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estate and funds in the hands of such executor, administrator, guardian or trustees, shall be liable in like manner, and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been, if he had been living and competent to act, and held the same stock in his own name.

Holding stock as executor, &c., not liable.

SEC. 17. Every such executor, administrator, guardian or trustee, shall represent the shares of stock in his hands at all meetings of the company, and may vote accordingly as a stockholder; and every person who shall pledge his stock as aforesaid, may, nevertheless, represent the same at all such meetings, and may vote accordingly as a stockholder.

Who may represent stock.

SEC. 18. The legislature may, at any time, alter, amend, or repeal this article, but such amendment or repeal

This article may be amended.

shall not take away or impair any remedy given against or in favor of any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

Capital stock
may be increased
or diminished.

SEC. 19. Any corporation or company heretofore formed, either by special act or under the general law, and now existing, or any company which may be formed under this article, ~~may~~ increase or diminish its capital stock, by complying with the provisions of this article, to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other branch named in section one of this article, subject to the provisions and liabilities of this article. But before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which its is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital, and any existing company heretofore formed under the general law, or any special act, may come under and avail itself of the privileges and provisions of this article by complying with the following provisions, and thereupon such company, its officers and stockholders, shall be subject to all the restrictions, duties and liabilities of this article.

Meeting of
stockholders.

Notice published
six weeks.

SEC. 20. Whenever any company shall desire to call a meeting of stockholders for the purpose of availing itself of the privileges of this article, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the trustees to publish a notice signed by at least a majority of them, in a newspaper in the county, wherein is situate the principal office of the company, if any shall be published therein, at least six successive weeks, and to deposit a written or printed copy thereof in the post office addressed to each stockholder at his usual place of residence, at least six weeks previous to the day fixed for holding such meeting; specifying the object of the meeting, the time and place, when and where such meeting shall be held, and the

amount to which it shall be proposed to increase or diminish the capital, and the business to which the company would be extended or changed, and a vote of at least two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of its capital stock or the extension or change of its business as aforesaid, or to enable a company to avail itself of the provisions of this article.

SEC. 21. If, at any time and place specified in the notice provided for in the preceding sections of this article, stockholders shall appear in person or by proxy, in number, representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present, in person or by proxy, and if, on canvassing the votes, it shall appear that a sufficient number of the votes has been given in favor of increasing or diminishing the amount of capital, or of extending or changing its business as aforesaid, or for availing itself of the privileges and provisions of this article, a certificate of the proceedings showing a compliance with the provisions of this article, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debts and liabilities of the company, and the amount to which the capital-stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman, and filed and recorded as required by the first section of this article, and when so filed and recorded, the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and business extended or changed as aforesaid, and the company shall be entitled to the privileges and provisions, and be subject to the liabilities of this article as the case may be.

Two thirds of stock to be represented in meetings to vary amount of capital.

Certificate to be filed.

SEC. 22. If the indebtedness of any such company shall at any time exceed the amount of its capital stock, the

Liability of trustees

trustees of such company assenting thereto, shall be personally and individually liable for such excess to the creditors of such company.

Treasurer to
make statement.

SEC. 23. Whenever any person or persons owning fifteen per cent. of the capital stock of any company formed under the provisions of this article, shall present a written request to the treasurer thereof, that they desire a statement of the affairs of such company, it shall be the duty of such treasurer to make a statement of the affairs of said company under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the persons who presented the said written request to said treasurer, within twenty days after such presentation, and shall, also, at the same time, place and keep on file in his office for six months thereafter, a copy of such statement, which shall, at all times, during business hours, be exhibited to any stockholder of said company demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in every six months. If such treasurer shall neglect or refuse to comply with any of the provisions of this article, he shall forfeit and pay to the person presenting said written request, the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter, until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

Copy to be kept
in office.

Consequences
of neglect.

Roads.

Exclusive right.

SEC. 24. Any corporation or association of persons organized under this act now or hereafter engaged in mining gold or silver bearing quartz rock, coal, lead, iron, copper, or other minerals, may construct or operate a rail road, tramway road or wagon road from their said mine or mines, to any point or points desired by them, and shall have the exclusive right of way to the line of their road over the unoccupied public domain for the space not exceeding one hundred feet on either side thereof, and also, the exclusive possession at the termini of their said road, and at such intermediate points as may be required for depots, buildings,

turn tables, water tanks, machine shops and other necessary appurtenances of a rail road, and said corporation or association of persons may file a survey or diagram of such line of road with the land claimed by them on either side thereof, and also the land claimed at the termini aforesaid, with the secretary of the territory, and it shall not be lawful for any person or persons to construct any road or erect any buildings or otherwise interfere with the possession of the land so indicated in the survey or diagram filed as aforesaid, and a certified copy of such survey under the seal of the territory shall be received in evidence in all courts of law or equity, within this territory.

Survey to be
filed.

SEC. 25. When any three or more persons shall associate to form a company for the purpose of constructing a wagon road under the provisions of this article, their certificate of incorporation in addition to the matters hereinbefore required to be stated therein, shall specify the termini of said road and the route of the same, as near as may be; and the said company shall have the right of way over the line named in the certificate, to erect toll gates, not to exceed one to every ten miles of road, and to collect toll thereat at the rates prescribed by the county commissioners, or the tribunal transacting county business, upon the application of such corporation, either at or before the time of commencing such road, or after completion thereof; *Provided*, That such rates of toll shall remain in force and may be collected from persons traveling such road for two years after the time of completing such road; and thereafter at the expiration of every two years, the county commissioners or tribunal transacting county business in each county, through which such road passes, shall fix and regulate such rates of toll but not at higher rates than those originally prescribed; and *Provided further*, That nothing in this article shall be so construed as to authorize any corporation formed under the provisions hereof, to locate their road, railroad, ditch, or flume, or any part thereof, upon any toll road previously

Certificate, what
to specify.

Proviso.

Proviso.

existing, nor upon any public highway, heretofore, and at the time of the organization of such corporation, used and travelled as such, except it may be necessary to cross such toll road or public highway; all such rates of toll shall be conspicuously posted at every gate upon such road.

Road to be kept
in repair.

No toll collect-
ed until repaired.

SEC. 26. No company formed under this article shall demand and receive toll whenever said wagon road is not in reasonably good repair, and any person having paid toll on said road, who shall find the same in bad condition and unsafe to travel with loaded teams, shall have the right to make complaint before any justice of the peace in the county in which the road is located, and it shall be the duty of said justice of the peace, to summon the said company, or any agent of the said company to appear before him to answer in said complaint, within not over five days from the date of said complaint; and if it be found that said road is in bad condition, or unsafe to travel, it shall be the duty of said justice to impose a fine of not less than ten dollars nor more than twenty-five dollars, to be collected from said company, and said justice shall issue his order that no toll be collected upon said road or any part thereof until it is put in good repair.

Fine for refus-
ing to pay toll.

SEC. 27. Any person after toll shall have been demanded by the regularly authorized toll collector, who may be found traveling upon said road and refusing to pay said toll, shall be subject to a fine of not less than five dollars nor more than ten dollars for such offense, the same to be collected before any justice of the peace in the county wherein such road is located.

Ditch.]

Certificate, what
to state.

SEC. 28. Whenever any three or more persons associate under the provisions of this article, to form a company for the purpose of constructing a ditch for the purpose of conveying water to any mines, mills, or lands, to be used for mining, milling or irrigating of lands, they shall, in their certificate, in addition to the matters required in section one of this article, specify as follows: The stream or streams from which the water is to be taken; the point or place on

said stream at or near which the water is to be taken out; the line of said ditch, as near as may be, and the use to which said water is intended to be applied.

SEC. 29. Any ditch company formed under the provisions of this article, shall have the right of way over the line named in the certificate, and shall also have the right to run the water of the stream or streams named in the certificate, through their ditch; *Provided*, That the line proposed shall not interfere with any other ditch whose rights are prior to those acquired under this article, and by virtue of said certificate. Nor shall the water of any stream be directed from its original channel to the detriment of any miners, mill-men, or others along the line of said stream, who may have a priority of right, and there shall be at all times left sufficient water in said stream for the use of miners and agriculturalists who may have a prior right to such water along said stream.

Rights of ditch companies.

Pr. viso.

SEC. 30. Any company constructing a ditch under the provisions of this article, shall furnish water to the class of persons using water in the way named in the certificate, as the way the water is designated to be used, whether miners, mill-men, or farmers, whenever they shall have water in their ditch unsold, and shall, at all times, give the preference to the use of the water in said ditch, to the class of persons so named in the certificate, the rates at which water shall be furnished to be fixed by the county commissioners, or the tribunal transacting county business, as soon as such ditch shall be completed and prepared to furnish water.

Water, when and to whom to be furnished.

SEC. 31. Every ditch company organized under the provisions of this article, shall be required to keep the bank of their ditch in good condition, so that the water shall not be allowed to escape from the same to the injury of any mining claim, road, ditch or other property located and held prior to the location of such ditch, and whenever it is necessary to convey any ditch over, or across, or above any lode or mining claim, that the company shall, if neces-

Ditches to be kept in good order.

Proviso.

sary to keep the water of said ditch out, or from any claim, flume the ditch so far as necessary to protect such claim or property from the water of said ditch; *Provided*, That in all cases where the ditch has priority of right by location, the owners of such claim or property shall be compelled to protect themselves from any damages that might be created by said ditch, and the owner of such claim shall be liable for any damages resulting to said ditch, by reason of the works or operations performed on such claim or property.

Certificate, what to contain.

SEC. 32. When any company shall organize under the provisions of this article, to form a company for the purpose of constructing a flume, their certificate, in addition to the matters required in the first section of this article, shall specify as follows: The place of beginning, the termini, and the route so near as may be, and the purpose for which such flume is intended, and when organized according to the provisions of this article, said company shall have the right of way over the line proposed in such certificate for such flume; *Provided*, it does not conflict with the right of any farmer, fluming, ditching or other company.

Proviso.

Bridge or ferry

SEC. 33. When any three or more persons shall associate under the provisions of this article, to form a company for the purpose of constructing a bridge or establishing a ferry over any of the streams of water in this territory, their certificate, in addition to the matters required in the first section of this article, shall specify as follows: The place where said bridge or ferry is to be built or established, and on what streams, and that the banks on both sides of the stream where the said bridge or ferry is to be built or established are owned by said company, or that they have obtained in writing, the consent of the owners of the banks where the said bridge is to be built, to erect the said bridge or establish the said ferry as aforesaid.

Bridge or ferry to be kept in good order.

SEC. 34. Any bridge built or established, under the provisions of this article, shall, at all times, be kept in good and safe condition for travel, both night and day, unless the same be rendered impassable by reason of flood or highwater,

and any bridge or ferry so built or established, shall, if destroyed by flood, fire or other causes, be rebuilt or established within a period of nine months from such destruction or the rights acquired under this article shall be forfeited and ceased to exist.

Rebuilt within
nine months.

SEC. 35. The company, previous to receiving any toll upon said bridge or ferry, shall set up and keep in a conspicuous place on the said bridge or ferry, a board, on which shall be written, painted or printed, in a plain, legible manner, the rates of toll, which rates of toll shall have been prescribed by the county commissioners, or the tribunal transacting county business in said county, and if any company shall demand or receive any greater rate of toll than the rate prescribed by said tribunal, then they shall be subject to a fine of ten dollars, and no company formed under the provisions of this article, shall demand or receive tolls whenever said bridge or ferry is not in a good and safe condition for travel, and any person having paid toll on such bridge or ferry, and finding the same in a bad or unsafe condition for loaded teams, shall have the right to make complaint before any justice of the peace in the county in which the bridge or ferry is located, who shall proceed as is provided in section twenty-six of this article.

Rates of toll to
be posted up.

Tolls not to be
received when
bridge is unsafe.

SEC. 36, 37. * * * * *

SEC. 38. Whenever any three or more persons associate under the provisions of this article, to form a company for the purpose of constructing a line or lines of magnetic telegraph in this territory, their certificate shall specify as follows: The termini of such line or lines, and the counties through which they shall pass; and such corporation is hereby authorized to construct said telegraph line or lines from point to point, along and upon any of the public roads, by the erection of the necessary fixtures, including posts, piers and abutments, necessary for the wires; *Provided*, That the same shall not incommode the public in the use of said roads or highways.

Telegraph lines.

Provide.

SEC. 39. Any company formed under the provisions of

Work to be with-
in ninety days,
and be completed
in two years.

this act, for the purpose of constructing any road, ditch, flume, bridge, ferry or telegraph line, shall, within ninety days from the date of their certificate, commence work on such road, ditch, flume, bridge, ferry or telegraph line as shall be named in the certificate, and shall prosecute the work with due diligence until the same is completed, and the time of the completion of any such road, ditch, bridge, ferry or telegraph line, shall not be extended beyond a period of two years from the time work was commenced as aforesaid; and any company failing to commence work within ninety days from the date of certificate, or failing to complete the same within two years from the time of commencement as aforesaid, shall forfeit all right to the route so claimed, and the same shall be subject to be claimed by any other company; the time for the completion of any flume constructed under the provisions of this act, shall not be extended beyond a period of four years; *Provided*, That this section shall not apply to any ditch or flume for mining purposes, constructed through any grounds owned by the corporation.

PROVISION.

POWERS.

SEC. 40. Every corporation under the provision of this act, as such, has power:

First, To have succession by its corporate name for the period limited in its certificate of charter;

Second, To sue and be sued, complain and defend in any court of law or equity;

Third, To make and use a common seal, and alter the same at pleasure;

Fourth, To hold, purchase and convey such real and personal estate as the purpose of the corporation may require;

Fifth, To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation;

Sixth, To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

SEC. 41. The powers enumerated in the preceding section, shall vest in every corporation that shall hereafter be created, although they may not be specified in the certificate, or in the act under which it shall be incorporated, but no corporation shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated.

Powers to vest in every corporation.

SEC. 42. Any person who shall wilfully or maliciously damage or interfere with any road, ditch, flume, bridge, ferry, railroad, telegraph line, or any of the fixtures, tools, implements, appurtenances, or any property of any company which may be organized under the provisions of this article, upon conviction thereof, before any court of competent jurisdiction in the county where the offense shall have been committed, shall be deemed guilty of a misdemeanor, and shall be punished by fine or imprisonment, or both, at the discretion of the court, said imprisonment not to exceed one year, and said fine not to exceed five hundred dollars, which shall be paid into the county treasury for the use of common schools, and said offender shall also pay all damages that any such corporation may sustain, together with costs of suit.

Punishment for interference with road, &c.

SEC. 43. Nothing in this act shall be so construed as to authorize any company organized under the same, to issue notes or bills for circulation as money.

No company to issue notes for use as money.

SEC. 44. Any company organized under and by virtue of any act of the territory of Dakota or any association of individuals acting as bodies corporate, may surrender their certificates or articles of association to the secretary of the territory, and become a body corporate and politic under the provisions of this article, by complying with all and singular the provisions thereof.

Companies already organized may surrender certificates, and reorganize.

SEC. 45. Whenever any road, railroad, ditch, telegraph or fluming company, organized or to be organized under the provisions of this chapter, or any law of this territory, shall not have acquired by gift or purchase, any land, real estate, or claim required for the construction or maintenance of their

When company does not own land &c., necessary to carry on its operations.

Petitions, what
to contain.

road, railroad, ditch, telegraph or flume, or which may be affected by any operation connected with the construction or maintainance of the same, the said corporation may present to the district judge of the judicial district wherein such lands, real estate or claim shall be, a petition signed by the president, attorney or agent of the same, describing with convenient accuracy and certainty, by map or otherwise, the lands, real estate or claims so required to be taken or effected as aforesaid, setting forth the name and residence of each owner or other person interested therein as owner, lessee or encumbrancer, as far as known to such president, attorney or agent, or appearing of record, and praying the appointment of three appraisers to ascertain the compensation to be made to such owner and persons interested, for the taking or injuriously effecting such lands, real estate or claims as aforesaid; the said district judge shall have satisfactory evidence that notice of an intended application and the time and place thereof, for the appointment of appraisers between said corporation and the owners and persons interested in such lands, real estate and claims, has been given at least ten days previously, to such owners personally at their residence, or on the premises, or by publication thereof in a newspaper printed in the county in which such lands, real estates or claims shall lie, or if no newspaper is published in said county, then by posting three or more notices in some public places in said county, such publication to be allowed only in respect to owners or persons interested, who shall appear by affidavit to have no residence in the county, known to such president, attorney or agent, which notice shall be published at least thirty days prior to the time fixed for the application as aforesaid. The court or judge may adjourn the proceedings from time to time, shall direct any future notice thereof to be given that may seem proper, shall have proofs and allegations of all parties interested touching the regularity of the proceedings, and shall, by an entry in its minutes, appoint three disinterested appraisers as aforesaid, specifying in such entry a time and place for the first meeting of such appraisers. The said appraisers,

Appraisers to
be appointed by
district judge.

before entering upon the duties of their office, shall take an oath to faithfully and impartially discharge their duties as said appraisers, and any one of them may administer oaths to witnesses produced before them; they may issue subpoenas and compel witnesses to attend and testify, and may adjourn and hold meetings for that purpose, and shall give reasonable previous notice to such owners or parties interested. They shall hear the proofs and allegations of the parties, and any two of them, after reviewing the premises, shall, without fear, favor or partiality, ascertain and certify the compensation proper to be made to said owners or parties interested, for the lands, real estate or claims to be taken or effected, as well as all damages accruing to the owners or parties interested, in consequence of the condemnation of the same, taken or injuriously affected as aforesaid, making such deduction or allowance for real benefits or advantages which such owners or parties interested may derive from the construction of said road, railroad, ditch, telegraph or flume. They, or a majority of them, shall make, subscribe and file with the register of deeds of the county in which such real estate or lands shall lie, a certificate of their said ascertainment and assessment, in which such lands, real estate or claims shall be described with convenient certainty and accuracy. The district judge, upon such certificate and due proof that such compensation and separate sums, if any be certified, have been paid to the parties entitled to the same, or have been deposited to the credit of such parties, in the county treasury, or other place for that purpose, approved by the court, shall make and cause to be entered in the minutes, a rule, describing such lands, real estate or claims in manner aforesaid, such ascertainment of compensation, with the mode of making it, and each payment or deposit of the compensation as aforesaid, a certified copy of which shall be recorded and indexed in the register of deeds' office of the proper county, in like manner and with like effect as if it were a deed of conveyance from the said owners and parties interested to the said corporation. Upon the entry of such rule, the said

Notice to owners.

Affidavit.

Duties of appraisers.

Certificate.

Corporation to
have possession.

corporation shall become seized in fee, or shall have the exclusive right, title and possession of all such lands, real estate or claims described in said rule, as required to be taken as aforesaid, during the continuance of the corporation, and may take possession of and hold and use the same for the purposes of the said road, railroad, ditch, telegraph or flume, and shall thereupon be discharged from all claims for any damages by reason of any matter specified in such petition, certificate, or rule of said district judge. If at any time after an attempted or actual ascertainment of compensation under this article, or any purchase by or donation to said corporation, of lands or claims for purchases aforesaid, it shall appear that the title acquired thereby, to all or any part of such lands for the use of said corporation, or if said assessment shall fail or be deemed defective, the said corporation may proceed and perfect such title by procuring an ascertainment of the compensation proper to be made to any person who has title, claim or interest in, or lien upon such lands, and by making payment thereof in the manner hereinafter provided, as near as may be, and at any stage of such new proceedings, or of any proceeding under this act, the district judge may, by rule in that behalf made, authorize the said corporation, if already in possession, and if not in possession, to take possession of and use said premises during the pendency and until the final conclusion of such proceedings, and may stay all actions and proceedings against such corporation, on account thereof; *Provided*, Such corporation shall pay a sufficient sum into court, or give approved security to pay the compensation in that behalf when ascertained, and in every case where possession shall be so authorized, it shall be lawful for the owners to conduct the proceedings to a conclusion, if the same shall be delayed by the company.

Defective assess-
ment.

Actions to be
ta yed.

Proviso.

Compensation.

The said appraisers shall receive five dollars per day, as compensation for each day actually employed, such compensation to be taxed and allowed by the district judge. If any appraiser so appointed shall die, be unable or fail to serve, the court may appoint another in his place, on reason-

able notice of the application, to be approved by the district judge.

SEC. 46. Whenever any corporation constituted or formed for the purpose of constructing a wagon road, according to the provisions of this article, shall have constructed one mile or more of the road by such corporation to be constructed, it shall be lawful for the county commissioners, or the tribunal transacting county business of the county in which the portion of road so constructed shall lie, to prescribe the rate of toll to be charged and collected by such corporation upon the portion of the road so constructed; and thereafter, and as other portions of the road to be constructed by such corporation shall be completed, such county commissioners or tribunal transacting county business, shall prescribe rates of toll to be charged and collected upon other portions of the road so completed as aforesaid, and such corporation shall have power to erect toll gates, not exceeding one to every ten miles, and to collect tolls thereat, at the rates prescribed, as aforesaid, until such road be completed; *Provided*, Said road shall be completed within two years after such rates shall have been prescribed.

Toll to be collected after one mile built.

Rates to be prescribed by county commissioners.

Proviso.

SEC. 47. Whenever any corporate body, organized under this article, shall have fully completed the wagon road to be by them constructed, and the county commissioners or tribunal transacting county business of the county in which the same shall be located, shall have prescribed the rates of toll to be charged and collected upon such road, such corporation shall be entitled to charge and collect toll at the rates so prescribed, for two years thence next ensuing; and at the expiration of the term of two years after such rate shall be prescribed, and biennially thereafter, during the existence of such corporation, the county commissioners or tribunal transacting county business, shall prescribe the rates of toll to be charged and collected on such road for the two years thence next ensuing.

Rates to remain unchanged for two years.

SEC. 48. Whenever any wagon road, constructed by any corporation organized under this article, shall be located

- When road is in two or more counties.

in two or more counties, it shall be lawful for the county commissioners or tribunal transacting county business of the several counties into or through which such road shall pass, to prescribe the rates of toll to be charged and collected by such corporation, on the portions or parts of such road lying within the limits of such counties, respectively.

Injunctions.

SEC. 49. Upon a suit in equity being commenced by any creditor of a domestic corporation, or a foreign corporation doing business in this territory, against said corporation or any of the directors or officers or agents thereof, in any court of competent jurisdiction of this territory, said court or a judge thereof shall have power to restrain by injunction, such corporation, its directors or officers or agents from assuming or exercising any franchise, liberty or privilege, or transacting any business not allowed by the charter or act of incorporation, and in the same manner to restrain any individual from exercising any corporate rights, privileges or franchises not granted to them by law.

Injunction, when issued.

SEC. 50. Such injunction may be issued before the coming in of the answer, upon satisfactory proof that the defendants complained of, have usurped, exercised or claimed any franchise, privilege or liberty, or corporate right not granted to them, or have been guilty of wasting or appropriating to themselves the funds of such corporation committed to their charge, and after the coming in of the answer, such injunction may be continued until a decree final shall be had.

Suit in equity.

SEC. 51. Whenever any creditor of a corporation shall seek to charge such corporation, the directors, trustees, or other superintending officers of such corporation, or the stockholders or agents thereof, on account of any liability credited by statute or common law, he may commence his suit in equity for that purpose in any court of this territory which shall possess jurisdiction, to enforce such liability; *Provided*, This act respecting the remedies herein authorized shall apply in all cases whatsoever to corporations, their directors, officers, trustees or agents heretofore doing busi-

Proviso.

ness within that portion of the territory of the United States now known as the territory of Wyoming, as well as to corporations, their directors, officers, trustees or agents now doing or that may hereafter do business within this territory.

SEC. 52. The court or a judge thereof shall proceed thereon as in other cases, and upon due proof that the defendants have been guilty of any of the acts set forth in the fifteenth section of this act, shall cause an account to be taken of the property and debts due to and from such corporation, and shall appoint a receiver who shall possess all the powers usually conferred on receivers; *Provided, however,* That said receiver may be appointed on proof as aforesaid, by affidavit made at the time of commencing said suit.

Receiver.

Provido.

SEC. 53. Said receiver appointed as aforesaid shall have and possess full power and authority for the purchase of all necessary supplies for the use of such corporation, paying for the same reasonable rates, and may, under the order of the court or a judge thereof, do and perform all such acts as are necessary to the prompt and faithful discharge of the trust aforesaid by such receiver under and by virtue of the powers conferred by the appointment under this act.

Power of receiver.

SEC. 54. The receiver so appointed as aforesaid, shall be entitled to the same commissions and compensation for his services as, is, or may be, provided by law to executors and administrators, and no greater or other commissions or compensation than is hereby allowed, shall be received or retained by him, unless by special order of the court having jurisdiction of the cause, on motion made therefor.

Compensation.

SEC. 55. The receiver so appointed as aforesaid, shall, on assuming the duties of the trust, enter into an undertaking, with good and sufficient sureties to be approved by the judge or court, conditioned that the said receiver shall, according to the rules and practice of the court, duly file an inventory with the court of all the property received by him, and annually, and oftener if thereunto required, duly

Security.

account for what he shall receive or have in charge as receiver in the said cause, and pay and apply what he shall receive or have in charge, as he may from time to time be directed by the court, or judge thereof; and to do and perform his office of receiver in all things according to the true intent and meaning of the order of the court or judge appointing him.

Proof of waste.

SEC. 56. The fact of the waste of corporate property under the fiftieth section of this act shall be fully made out on due proof to the court by affidavit, of any of the following acts by the directors, officers, or agents of a corporation :

First, When they shall sell or dispose of, or have sold or disposed of the securities of such corporation, and refuse to account for the same ;

Second, When they shall sell, have sold, or shall offer for sale the securities of such corporation at ruinous rates ;

Third, When they shall purchase, or have purchased, such securities for their individual use or benefit, at less than par value thereof, or shall violate, or have violated, any section of the charter creating such corporation, by selling or offering for sale to the public, any stock of such corporation at a less rate than may be prescribed under and by virtue of such charter.

Supplemental complaint.

SEC. 57. If any creditor of a corporation desire to make such directors, stockholders, officers or agents, parties to the suit, after a decree thereon against the parties originally made defendants, he may do so on a supplemental complaint against them, founded on such decree.

No officer to be interested in contract.

SEC. 58. No officer, agent, director, or stockholder of any such corporation, shall be interested directly or indirectly in any contract made by or on behalf of such corporation, or shall make any agreement by which he or they are to be individually benefitted under or through the participation of such profits derived thereon ; and such officer, agent, or director shall be personally liable for the amount so received under such contract, and upon a decree or judgment, execution may issue as in other cases, at the request of such

creditor; *Provided*, No greater amount shall be collected under said execution than the amount so received as profits by such officer, agent, or director.

Proviso.

SEC. 59. When a creditor has obtained a judgment against such corporation, and the defendants are non-residents of this territory, in case such defendants have no property within the jurisdiction of the court to be reached by an execution, a return thereof may be made, instanter, by the officer holding the writ, and also, when the officers, directors, or agents of any corporation doing business within this territory, shall waste or squander, or shall have wasted or squandered the assets of such corporation, by which act the collection of just claims of creditors are delayed; in such case a suit in equity may be maintained upon a bill stating either of the causes mentioned in this section, and upon due proof thereof by affidavit, the court or any judge thereof shall issue an injunction and appoint a receiver, who shall be governed as hereinbefore provided.

Judgment.

ARTICLE II.

Religious and Benevolent Societies, Libraries, Colleges, Academies, Fire and Military Companies.

SEC. 1. Any number of persons, not less than three, may associate themselves together in the manner hereinafter mentioned, for any of the following purposes:

Purposes for which persons may form corporations.

First, For the support of the gospel, or the maintenance of religious worship;

Manner of procedure.

Second, To maintain, hold and keep in repair a house of public worship, with or without a parsonage house appurtenant thereto;

Third, To provide, hold, maintain and keep in repair a place or places for the burial of the dead. The same persons may unite in one association for one or more or for all of the purposes above mentioned;

Fourth, To establish and maintain a library, or a cabinet of mineralogical or metallurgical specimens, or relating to any other science;

Fifth, To establish and maintain a college, academy or other like institution, for the education of youth ;

Sixth, To promote the diffusion of useful information by other means than above mentioned ;

Seventh, For the mutual assistance of the members of such society in time of sickness or necessity, and to provide a fund for this purpose by gratuitous contributions of the members thereof from time to time, and for the like incidental benevolent purposes ;

Eighth, To establish and maintain hospitals and infirmaries for the cure of the sick ;

Ninth, To establish and maintain lodges and chapters of the societies commonly known as the order of good templars, and other like benevolent societies ;

Tenth, To establish and maintain fire companies in any incorporated city or town ;

Eleventh, To establish and maintain independent companies and regiments of militia ;

Twelfth, To establish and maintain societies for the preservation of the history and antiquities of this country, or any part thereof.

Certificate, what
to state.

All such persons so desiring to associate themselves for any of the foregoing purposes, shall make, sign, acknowledge, and cause to be filed and recorded in the same manner as provided in the first section of article one of this chapter, duplicate certificates setting forth the name by which they have associated themselves, the purpose for which the association is formed, the number of the trustees and the names of the trustees who shall manage the affairs of the association during the first year, or until the next annual election, the place at which the corporation will carry on its business, or pursue the purpose for which it is formed, and the duration of such corporation, which may be perpetual.

Existence, &c.,
to be proven as
in article one.

SEC. 2. Upon the filing of such certificate, the persons therein named, their associates, successors and assigns, shall be and become a body corporate and politic by the name in such certificates mentioned, and its existence, powers and

purposes may be proven in like manner as in the case of other corporations, as provided in article one of this act.

SEC. 3. Every such corporation shall have power to sue and be sued, plead and be impleaded, in all courts of law and equity whatsoever; to have and use a common seal, and alter the same at pleasure; to contract and be contracted with in pursuance of the powers of such corporation; to purchase or receive by gift or otherwise, personal estate, such as may be necessary or proper for the purposes of such corporation, and to dispose of the same, to purchase or receive by gift, grant, devise or otherwise, real estate, such as may be necessary or proper for the purposes of the corporation, but not exceeding as follows: Corporations formed for any of the purposes specified in the first, second, third, seventh, eighth and ninth subdivisions of the first section of second article, not exceeding fifty thousand dollars in value. Corporations formed for any of the purposes named in the ninth subdivision of the first section, not exceeding fifty thousand dollars in value. Corporations formed for the purposes named in the tenth and eleventh subdivisions of section one, not exceeding ten thousand dollars in value.

Powers.

Amount of
property.

SEC. 4. The members of every such corporation shall have power when organized, to adopt by-laws for the following purposes: To regulate the time and places of holding their meetings, and the manner of calling special meetings; to regulate the management of the affairs and property of such corporation; to regulate the number of trustees and the other officers of the corporation, and their powers and duties; to regulate the qualifications, choice, powers and duties of the servants, teachers, and employes of such corporations; to prescribe the qualifications of persons desiring admissions to such corporations, the manner of the admissions of new members, and the discharge or expulsion of members; to provide for the manner of forfeiting or selling of the shares in such corporation of any member failing to pay any assessment thereon, and all other by-laws and regulations necessary in promoting the objects and purposes of such

By-laws.

corporation, so that the same be not inconsistent with the organic act and laws of this territory, or the articles of association of such corporation.

Power to raise
money.

SEC. 5. Any such corporation shall have power to raise money for the purposes of the corporation, in such manner as may be agreed upon by the articles of association or their by-laws.

Power to divide
stock and prop-
erty into shares.

SEC. 6. Any such corporation may, by their articles of associations or by-laws, divide their stock and property into shares, and determine the terms upon which such shares of stock shall be held by the members, and the manner in which the same shall be sold and transferred.

Assessments.

SEC. 7. Where stock and common property of any such corporation shall be so divided into shares, any such corporation, or the trustees thereof, as the by-laws may provide, may at any meeting called for the purpose, raise money for the purposes of the corporation by assessment upon the shares of such stock; and the payment of such assessment may be enforced by sale or forfeiture of the shares of such stock as the by-laws may provide, but no other estate or property of any stockholder shall be liable to be seized or sold on execution or otherwise, for the non-payment of any assessment.

Dividend.

SEC. 8. No dividend shall be declared or paid upon the stock of any such corporation, until the final dissolution thereof.

Officers to re-
ceive no salary.

SEC. 9. No officer of any corporation formed under the provisions of the first, second, third, fifth, seventh, eighth or ninth, subdivisions of section one of this article, shall receive any salary or remuneration from such corporation for his services as such officer, nor shall any such officer enter into any contract with the corporation during the time of his remaining in office.

Powers of trus-
tees of religious
societies."

SEC. 10. The board of trustees of any religious society formed under the provisions of the first subdivision of section one of this article, shall have and exercise such powers as are or may be conferred upon them by the by-laws of such

corporation, according to the usage and discipline of such society in their temporal affairs.

SEC. 11. The board of trustees of any corporation formed for the purposes mentioned in the fifth subdivision of section one of this article, shall have power to prescribe reasonable by-laws for the government of the youth attending at the institution of learning maintained by such corporation, and to confer such degrees and diplomas as are usually conferred by like institutions. Powers of trustees of colleges, &c.

SEC. 12. Corporations formed under the provisions of the eleventh subdivision of the said first section, shall have power to impose by their by-laws, pecuniary fines not exceeding one hundred dollars in any case, for the breach of any by-laws or military regulation of such corporation, and all such fines may be reversed by action before any justice of the peace of the county wherein the headquarters of such military company or regiment are. Every military company and regiment organized under the provisions of said section, shall at all times be subject to the command of the governor of the territory. Power to impose fines.

SEC. 13. This article may be at any time be repealed, altered or amended by the legislature, and corporations formed under the provisions hereof shall be subject to such regulations and alterations as the legislature may hereafter make. Article may be repealed.

ARTICLE III.

Masonic and Odd Fellow's Societies.

SEC. 1. That any number of persons, not less than seven, may voluntarily associate themselves together for either of the following purposes: To organize masonic lodges, royal arch chapters, commanderies of knights templar, councils of royal and select masters, lodges of perfection, councils of princes of Jerusalem, chapters of rose croix, consistories of princes of the royal secret, subject to the regulations of their respective grand bodies, according to the constitutions and usages of said masonic fraternity. Number who may form masonic societies.

Certificate to
be filed.

SEC. 2. Any such masonic body that may wish to become incorporated under and by virtue of this act, shall file in the office of the secretary of the territory and the office of the register of deeds of the county in which said masonic body shall be located, a certificate in writing, setting forth the name of such masonic body, together with its number (according to masonic usage), and the place where the same shall be held, which certificate shall be signed by the presiding officer and secretary, and attested by the seal of such masonic body, and such masonic body or association having filed the certificate required by this act, shall be deemed and held a body corporate and politic, under the name and styles, stated in such certificate, and may sue and be sued in all courts of record in this territory, and shall have power to contract and be contracted with, and use a common seal.

Powers.

May hold and
dispose of real
estate.

SEC. 3. That any masonic body incorporated under this act, may take by purchase, grant, devise, gift or otherwise, any town lot or tract of land; may sell and dispose of the same, and execute deeds of conveyance, signed by the presiding officer, secretary and treasurer, when authorized by a majority vote of all the members of said body, or by any person the said masonic body may by a majority vote of its members designate, attested by seal of such body.

May make by-
laws.

SEC. 4. Any such masonic body organized under the provisions of this act may make all needful by-laws and regulations necessary to carry out the provisions of this act, and not inconsistent with the laws and regulations of such bodies or their respective grand bodies under which the same may be holden, and not inconsistent with the constitution of the United States and the organic act and laws of this territory.

Personal prop-
erty.

SEC. 5. Any such masonic body may hold and possess personal property, and sell and dispose of the same.

Dissolution, how
effected.

SEC. 6. If, at any time the members of the said masonic bodies so incorporated under this act, wish to dissolve such corporations, they may do so by a majority vote of its members, and the presiding officer, secretary and treasurer

of such body, shall file a certificate of such dissolution with the secretary of the territory and with the register of deeds of the county where such body is located; and the filing of such certificate shall be held and deemed to dissolve such corporation, but shall not effect any suit which may be pending against such corporation, nor deprive any person or persons of the right of action against such masonic body in any cause of action existing at the time of such dissolution.

SEC. 7. Any of the foregoing masonic bodies, duly chartered by the respective grand bodies according to the laws, constitutions and usages of the masonic fraternity, and not wishing to become a corporate body under the provisions of this act, may take and hold real estate for their use and benefit, by purchase, grant, devise, gift or otherwise, in and by the name and number of said body, according to the respective registers of the grand body under which the same may be holden; and the presiding officer of such body, together with the secretary thereof, may make conveyances of real estate belonging to such body when authorized by a majority of all the members of said body under such regulations as the said masonic body or its grand body may see fit to make; but all such conveyances shall be attested by the seal of said subordinate body.

May hold and convey real estate without being incorporated.

SEC. 8. Should it become necessary at any time to protect the rights of such masonic body in and to the real estate and personal property—said body not being incorporated under this act—the presiding officer thereof may bring suit in his own name, for the benefit of the masonic body over which he presides, in any of the courts of record of this territory having original jurisdiction, and may prosecute or defend the same in the supreme court of the territory.

Presiding officer may sue and defend.

SEC. 9. This act shall be deemed to apply to the independent order of odd-fellows as well as to the masonic fraternity, and any subordinate or grand lodge of odd-fellows in this territory, may organize and become a body corporate under the provisions of this act, in the same manner as masonic bodies, and may also take, hold and convey property

This act applies to I. O. O. F.

and do all other acts, and have all the privileges conferred by this act on masonic bodies.

ARTICLE IV.

Foreign Corporations.

Foreign corporation, how proceed.

SEC. 1. Every incorporated company, incorporated under the laws of any foreign state or kingdom, or of any state or territory of the United States, beyond the limits of this territory, and now or hereafter doing business within this territory, shall, within thirty days after commencing so to do business, file in office of the register of deeds of the county within which its business is conducted, a copy of its charter of incorporation; or in case such company is incorporated by certificate under any general incorporation law, a copy of such certificate and of such general incorporation law, duly certified and authenticated by the proper authority of such foreign state, kingdom or territory.

Consequences of failure.

SEC. 2. A failure to comply with the provisions of this article shall render each and every officer, agent and stockholder of any such corporation so failing herein, jointly and severally, personally liable on any and all contracts of such company, made or to be performed within this territory.

Certificates, &c., to be filed with register of deeds.

SEC. 3. The several certificates, statutes and charters mentioned in section first of this article, shall be by the register of deeds filed and preserved in his office, as a part of the records thereof; and he shall be entitled to receive a fee of one dollar for receiving and filing every such certificate and statute. Copies of such charters, statutes and certificates, duly certified by such register of deeds, under his seal of office, shall be received in all courts of this territory as sufficient evidence of the existence and corporate character of such incorporations, and of all their powers, duties and liabilities, and the originals thereof, may in like manner be used in evidence of these matters with like effect.

Copies of such charters or documents

ARTICLE V.

Of the Dissolution of Corporations.

SEC. 1. Upon dissolution by expiration of its charter or

otherwise, if any corporation now existing, or which hereafter may be formed, unless some other person or persons be appointed by the legislature or some court of competent jurisdiction, the board of trustees or directors of such corporation, or the managers of the corporate affairs by whatever name known, acting last before the time of their dissolution, and the survivors of them, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the same, to sue for and collect the debts and moneys due the corporation, or to compound and settle the same as they may deem best; to have, hold, reserve, sell and dispose of property real and personal of every such corporation dissolved, to adjust and pay all the debts of the corporation dissolved, to divide the residue of the moneys and property belonging to the corporation dissolved, after payment of debts and the necessary and reasonable expenses, among the stockholders holding stock in such corporation, in proportion to the amount of stock of each stockholder paid up; all such trustees shall be jointly and severally liable to the creditors and stockholders of such corporation dissolved, to the extent of the property and effects which shall come into their hands and possession, or into the hands or possession of any of them.

Duties of trustees on dissolution.

SEC. 2. The title to all real and personal estate belonging to any such corporation, shall immediately upon the dissolution thereof, unless by a decree of a court of competent jurisdiction declaring such dissolution, it is otherwise ordered, pass to and rest in such trustees, directors or other managers, and an action at law may be maintained by such trustees or directors, or the survivors of them, in their own names by the style of the trustees of such corporation dissolved, naming it, for the recovery of all such property or of any damage done to the same, or for the recovery of any debts due such corporation dissolved.

Title to property to rest in trustees.

SEC. 3. No suit or action at law or in chancery whereto any corporation is or may be a party, shall abate by reason of the dissolution of such corporation by expiration of its charter of incorporation or otherwise; but the trustees or

No suit to abate

directors of such corporation, acting as trustees to the stockholders and creditors after the dissolution as herein provided, or the survivors of them, or the trustee or trustees, receiver or receivers, appointed by the decree of any court of competent jurisdiction, may prosecute or defend such suit or action in the name of the corporation dissolved, notwithstanding the dissolution.

May prosecute
in corporate
name.

SEC. 4. • Any corporation dissolved may, notwithstanding such dissolution, prosecute an action at law in the corporate name, for the use of the person entitled to receive the proceeds of such suit, upon any cause of action accrued, or which, but for such dissolution, would have accrued to such corporation and in the same manner, and with like effect as if such corporation were not dissolved.

Lien or execution not to be suspended or dissolved.

SEC. 5. The lien of a judgment or execution at law, or a decree of a court of equity, in favor of or against any corporation, shall not be dissolved or suspended by reason of the dissolution of such corporation, subsequent to the rendition of such judgment or the entry of such decree, or the issuing of such execution, but execution may be had thereof in the same manner as if such dissolution had not occurred.

No execution to issue subsequent to dissolution.

SEC. 6. No execution shall issue upon judgment at law, rendered against any corporation, subsequent to the dissolution of such corporation, but the same, with the costs thereof, shall be paid by the trustees as other debts.

Jurisdiction of court of chancery

SEC. 7. Nothing in this article contained shall be construed to impair the jurisdiction of the court of chancery, to decree the dissolution of any corporation, or to appoint a receiver or receivers, trustee or trustees, to settle the affairs of any corporations dissolved by lapse of time or otherwise, and all trustees or managers of any corporation, acting as the trustees of the stockholders and creditors thereof, after the dissolution of the corporation, shall, in all things be subject to the control of the court of chancery; may be required to give bond with security, to be approved by the court, upon petition of any stockholder or creditor of the corporation dissolved, conditioned for the due discharge of

Trustees to give bond.

their trust ; may be required to account for the proceeds of the property and effects of the corporation, and for any failure to give such bond or render such account, or for any default or neglect of duty, they or any of them may be removed by the court, and a successor or successors appointed.

SEC. 8. This act shall be deemed a public act and shall take effect from and after its passage.

Approved 10th December, 1869.

HABEAS CORPUS.

CHAPTER 9.

AN ACT REGULATING PROCEEDINGS ON HABEAS CORPUS.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows :

SEC. 1. The petitions for the writ of habeas corpus What the petition must state. must be sworn to and must state,—

First, That the person on whose behalf it is sought is restrained of his liberty, and the person by whom, and the place where he is so restrained, mentioning the names of the parties, if known, and if unknown, describing them with as much particularity as practicable.

Second, The cause or pretense of such restraint, according to the best information of the applicant ; and if it be by virtue of any legal process, a copy thereof must be annexed, or a satisfactory reason presented for its absence.

Third, It must state that the restraint is illegal and wherein.

Fourth, That the legality of the imprisonment has not already been adjudged upon a prior proceeding of the same character, to the best knowledge and belief of the applicant,

or if so previously adjudged upon, stating forth as fully as practicable, the facts of such previous hearing, with a copy of all the papers connected therewith, or a satisfactory reason for the absence of such copy or copies.

Fifth, It must also state whether application for the writ has been made to and refused by any court or judge, and if such application has been made, a copy of the petition in that case, with the reasons for the refusal thereto appended, must be produced, or satisfactory reasons given for the failure to do so.

To be sworn to

SEC. 2. The petition must be sworn to by the person confined, or by some one in his behalf, and presented to some court or officer authorized to allow the writ.

Who may allow

SEC. 3. The writ of habeas corpus may be allowed by the supreme or district court, or by any judge of either of those courts. In such cases, it may be served in any part of the territory.

May be allowed
by probate judge.

SEC. 4. It may also be allowed by any probate judge of the county where the applicant is held at the time of making his application, except when the commitment was made by order of one of the courts or officers mentioned in the preceding section; but when allowed by the probate court, it is valid only within the limits of county where issued.

Must be made
to the nearest
court.

SEC. 5. Application for this writ, when made to the supreme or district courts, or to either of the judges thereof, must be made to the court or judge most convenient in point of distance to the applicant, and the more remote court or judge, if applied to for the writ, may refuse the same unless a sufficient reason be stated in the petition, for not making the application to the more convenient supreme or district court or a judge thereof.

When not al-
lowed.

SEC. 6. If, from the showing of the petitioner, the plaintiff would not be entitled to any relief, the court or judge may refuse to allow the writ.

When allowed.

SEC. 7. But if the petition show a sufficient ground for relief, and is in accordance with the foregoing requirements,

the writ shall be allowed, and may be substantially as follows :

The territory of Wyoming: To the sheriff of, &c., (or to A. B., as the case may be) you are hereby commanded to have the body of C. D., by you unlawfully detained as is alleged, before the court, or before me, or before E. F., Judge, &c., (as the case may be) at _____ on the _____ day of _____ 18____ (or immediately after being served with the writ,) to be dealt with according to law, and have you there and then this writ with a return thereon of your doings in the premises.

Form.

SEC. 8. When the writ is allowed by a court, it is to be issued by the clerk, but when allowed by a judge he must issue the writ himself, subscribing his name thereto without any seal.

Who must issue

SEC. 9. If the writ is disallowed, the court or judge shall cause the reasons of said disallowance to be appended to the petition, and returned to the person applying for the writ.

Proceedings,
when disallowed.

SEC. 10. Any judge, whether acting individually or as a member of a court, who wrongfully and wilfully refused such allowance of the writ when properly applied for, shall forfeit to the party aggrieved the sum of one thousand dollars.

Forfeiture.

SEC. 11. Whenever any court or judge authorized to grant this writ, has evidence from a judicial proceeding before them, that any person within the jurisdiction of such court or officer, is illegally imprisoned, or restrained of his liberty, it is the duty of such court or judge to issue or cause to be issued, the writ as aforesaid, though no application be made therefor.

Writ to be is-
sued without ap-
plication.

SEC. 12. The writ may be served by the sheriff or by any other person appointed for that purpose by the court, or judge by whom it is issued or allowed. If served by any other than the sheriff, he possesses the same power, and is liable to the same penalty for a non-performance of his duty as though he were the sheriff.

Who may serve
writ.

SEC. 13. The proper mode of service is by leaving the

Service, how
made.

original writ with the defendant, and preserving a copy thereof on which to make the return of service.

When defendant not found.

SEC. 14. If the defendant cannot be found, or if he have not the plaintiff in custody, the service may be made upon any person having the plaintiff in his custody, in the same manner and with the same effect as though he had been made defendant therein.

When defendant conceals himself, &c.

SEC. 15. If the defendant conceal himself, or refuse admittance to the person attempting to serve the writ, or if he attempt wrongfully to carry the plaintiff out of the county or territory after the service of the writ, as aforesaid, the sheriff or the person who is attempting to serve, or who has served the writ as above contemplated, is authorized to arrest the defendant, and bring him together with the plaintiff, forthwith before the officers or court before whom the writ is made returnable.

Powers of sheriff.

SEC. 16. In order to make such arrest, the sheriff or other person having the writ, possesses the same power as is given to a sheriff for the arrest of a person charged with a felony.

Plaintiff to be taken into custody, when.

SEC. 17. If the plaintiff can be found, and if no one appear to have the charge or custody of him, the person having the writ may take him into custody, and make return accordingly. And to get possession of the plaintiff's person, in such cases, he possesses the same power as is given by the preceding section for the arrest of the defendant.

Precept, when to be issued.

SEC. 18. The court or judge to whom the application for the writ is made, if satisfied that the plaintiff would suffer any irreparable injury before he could be relieved by the proceedings as above authorized, may issue a precept to the sheriff or any other person selected instead, commanding him to bring the plaintiff before such court or judge forthwith.

Arrest of defendant.

SEC. 19. When the evidence aforesaid is further sufficient to justify the arrest of the defendant for a criminal offense committed in connection with the illegal detention of the plaintiff, the precept must also contain an order for the arrest of the defendant.

SEC. 20. The officer or person to whom the precept is

directed, must execute the same by bringing the defendant, and also the plaintiff, if required, before the court or judge issuing it, and thereupon the defendant must make return to the writ of *habeas corpus* in the same manner as if the ordinary course had been pursued.

Return, how made.

SEC. 21. The defendant may also be examined and committed, or bailed or discharged, according to the nature of the case.

Defendant examined, &c.

SEC. 22. The writ of *habeas corpus* must not be disobeyed for any defect of form or misdescription of the plaintiff or defendant, provided enough is stated to show the meaning and intent of the writ.

Writ not to be disobeyed for defect of form.

SEC. 23. Any person served with the writ is to be presumed to be the person to whom it is directed, although it may be directed to him by a wrong name or description.

Wrong name.

SEC. 24. Service being made in any of the modes herein before provided, the defendant must appear at the proper time and answer the said petition.

Defendant to appear.

SEC. 25. He must also bring up the body of the plaintiff, or show good cause for not doing so.

Bring body of plaintiff.

SEC. 26. A wilful failure to comply with the above requisitions, renders the defendant liable to be attached for a contempt, and to be imprisoned until a compliance is obtained, and also subjects him to the forfeiture of one thousand dollars to the party thereby aggrieved.

Failure to comply.

SEC. 27. Such attachment may be served by the sheriff or any other person thereto authorized by the judge, who shall also be empowered to bring up the body of the plaintiff forthwith, and has for this purpose the same powers as are above conferred in similar cases.

Attachment how served.

SEC. 28. The court or officer allowing the writ must cause the prosecuting attorney of the proper county to be informed of the issuing of the writ, and of the time and place, when and where it is made returnable, except when the court or officer may deem it unnecessary.

Prosecuting attorney notified.

SEC. 29. The defendant in his answer must state simply and unequivocally, whether he then has, or at any

Answers.

time has had the plaintiff under his control and restraint, and if so, the cause thereof.

Reasons for transfer.

SEC. 30. If he has transferred him to another person, he must state the fact, and to whom, and the time thereof, as well as the reason and authority therefor.

Copy of process.

SEC. 31. If he holds him by virtue of a legal process or written authority, a copy thereof must be annexed.

Demur or reply.

SEC. 32. The plaintiff may demur or reply to the defendant's answer, and all issues joined thereon shall be tried by the judge or court.

Substance of reply.

SEC. 33. Such replication, except when the hearing is before the judge of probate of the county, may deny the sufficiency of the testimony to justify the action of the committing magistrate, on the trial of which issue all written testimony before such magistrate may be given in evidence before the court or judge in connection with any other testimony which may then be produced.

What may not be questioned.

SEC. 34. But it is not permissible to question the correctness of the action of a grand jury in finding a bill of indictment, or of the petit jury in the trial of a cause, nor of a court or judge when acting within their legitimate province, and in a lawful manner.

When discharged

SEC. 35. If no sufficient legal cause of detention is shown, the plaintiff must be discharged.

Order of commitment on bail when made.

SEC. 36. Although the commitment of the plaintiff may have been irregular, still if the court or judge is satisfied from the evidence before them that he ought to be held to bail or committed, either for the offense charged, or any other, the order may be made accordingly.

Plaintiff committed, &c.

SEC. 37. The plaintiff may also, in any case be committed, let to bail, or his bail be mitigated or increased, as justice may require.

Defendant may retain plaintiff.

SEC. 38. Until the sufficiency of the cause of restraint is determined, the defendant may retain the plaintiff in his custody, and may use all necessary and proper means for that purpose.

Waiver of right to be present.

SEC. 39. The plaintiff, in writing, or his attorney, may waive his right to be present at the trial, in which case the

proceedings may be had in his absence; the writ will in such cases be modified accordingly.

SEC. 40. Disobedience to any order of discharge subjects the defendant to attachment for a contempt, and also to the forfeiture of one thousand dollars to the party aggrieved, besides all damages sustained by him in consequence of such disobedience. Contempt.

SEC. 41. If the defendant attempt to elude the service of the writ of *habeas corpus*, or to avoid the effect thereof by transferring the plaintiff to another, or by concealing him, he shall on conviction, be imprisoned in the penitentiary or county jail not more than one year, and fined not exceeding one hundred dollars, and any person knowingly aiding or abetting in any such act, shall be subject to the like punishment. Attempt to elude service of writ.

SEC. 42. Any officer refusing to deliver a copy of any legal process by which he detains the plaintiff in custody, to any person who demands such copy, shall forfeit five hundred dollars to the person so detained. Forfeiture.

SEC. 43. When the proceedings are before a judge, (except when the writ is refused), all the papers in the case, including his final order, shall be filed with the clerk of the district court of the county wherein the final proceedings were had, and a brief memorandum thereof shall be entered by the clerk upon his judgment docket. Papers filed with clerk.

SEC. 44. No officer shall refuse to perform any of the duties required by this chapter for the reason that his fees are not paid in advance, but the judge or court, to whom application for said writ is made, may, in his or its discretion, require the applicant to give security for the payment of such costs as may be taxed against such applicant. Fees not paid in advance.

SEC. 45. This act to take effect and be in force on and after the first day of January, one thousand eight hundred and seventy.

Approved, 2nd December, 1869.

DIVORCES.

CHAPTER 10.

AN ACT TO REGULATE DIVORCES AND ALIMONY.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows :

Marriages void,
in what cases.

SEC. 1. Marriages are void without any decree of divorce, that may hereafter be contracted in this territory.

First, When one party is a white person, and the other is possessed of one-eight or more negro or Mongolian blood ;

Second, When either party has a husband or wife living at the time of marriage ;

Third, When either party is insane or an idiot at the time of contracting the marriage ;

Fourth, When the parties stand in the relation to each other of parent or children, grand-parent and grand-children, brothers and sisters of half as well as of whole blood, uncle and niece, aunt and nephew and first cousins, and this subdivision extends to illegitimate as well as to legitimate children and relations.

Non-age.

SEC. 2. In case of a marriage solemnized when either of the parties are under the age of legal consent, if they shall separate during such non-age, and not cohabit together afterwards, or in case the consent of one of the parties was obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be deemed voidable.

Force or fraud.

Proceedings
when validity
doubted.

SEC. 3. When a marriage is supposed to be void, or the validity thereof is doubted, for any of the causes

mentioned or referred to in the two preceding sections, either party, excepting in the cases where a contrary provision is hereinafter made, may file a petition or bill in the district court of the county, where the parties or one of them reside, or in the court of chancery for annulling the same, and such shall be filed, and proceedings shall be had thereon, as in the case of a petition or bill filed in said court for advice, and upon due proof thereof, it shall be declared void by a decree of nullity.

SEC. 4. When the validity of any marriage shall be denied or doubted by either of the parties, the other party may file a bill or petition in the manner aforesaid, for affirming the marriage, and upon due proof of the validity thereof, it shall be declared valid by a decree of the court, and such decree, unless reversed on appeal, shall be conclusive upon all persons concerned.

Petition for affirming.

SEC. 5. A divorce from the bonds of matrimony may be decreed by the district court of the county where the parties or one of them reside, on the application by petition or bill of the aggrieved party, in either of the following cases:

When divorce may be decreed.

First, When adultery has been committed by any husband or wife.

Second, When one of the parties was physically incompetent at the time of marriage.

Third, When one of the parties has been sentenced to imprisonment in any prison, jail or house of correction for three years or more, and no pardon granted after a divorce for that cause, shall restore such party to his or her conjugal rights.

Fourth, Where either party shall wilfully abandon the other without good cause, for the term of one year.

Fifth, When the husband or wife shall have become an habitual drunkard.

Sixth, When one of the parties is repeatedly guilty of such unhuman treatment as shall endanger the life of the other.

SEC. 6. No divorce shall be granted unless the complain-

Six months residence.

ant shall have resided in this territory for six months immediately preceding the time of filing the complaint, or unless the marriage was solemnized in this territory, and the applicant shall have resided therein from the time of the marriage to the time of filing the complaint.

Collusion.

SEC. 7. No divorce shall be decreed in any case where it shall appear that the petition or bill therefor was founded in or exhibited by collusion between the parties, nor where the party complaining shall be guilty of the same crime or misconduct charged against the respondent.

Petition exhibited by wife.

SEC. 8. A petition or a bill for a divorce may be exhibited by a wife in her own name as well as a husband, and in all cases the respondent may answer such bill without oath.

Suits for divorce; how conducted.

SEC. 9. Suits to annul or affirm a marriage, or for a divorce, shall be conducted in the same manner as other suits in courts of equity, and the court shall have the power to award issues, to decree costs, and enforce its decree as in other cases.

Costs, how paid.

SEC. 10. In every suit brought for a divorce, the court may, in its discretion, require the husband to pay any sum necessary to enable the wife to carry on or defend the suit during its pendency, and it may decree costs against either party, and award execution for the same, or it may direct such costs to be paid out of any property sequestered or in the power of the court, or in the hands of a receiver.

Husband not restrain liberty of wife.

SEC. 11. After the exhibition of the petition or a bill in a suit to annul a marriage, or for a divorce from the bonds of matrimony, the court may at any time, either in term or vacation, on the petition of the wife, prohibit the husband from imposing any restraint upon her personal liberty, during the pendency of the cause.

Custody and care of children.

SEC. 12. The court may, in like manner, on the application of either party, make such order concerning the care and custody of the minor children of the parties, and their suitable maintenance during the pendency of such suit, as shall be deemed proper and necessary, and for the benefit of the children.

SEC. 13. Upon pronouncing a decree of nullity of a marriage, and also upon decreeing a divorce from the bonds of matrimony, the court may make such further decree as it shall deem just and proper concerning the care, custody and maintenance of the minor children of the parties, and may determine with which of the parents the children or any of them, shall remain.

Who may have
care of children,
decreed by court.

SEC. 14. The court may from time to time afterward, on the petition of either of the parents, revise and alter such decree, concerning the care, custody and maintenance concerning the same, as the circumstances of the parents and the benefit of the children shall require.

Decree may be
altered.

SEC. 15. Whenever the nullity of a marriage or a divorce from the bonds of matrimony, for any cause excepting that of adultery, committed by the wife, shall be decreed, and when the husband shall be sentenced to be imprisoned for life, the wife shall be entitled to the immediate possession of all her real estate in like manner as if her husband were dead.

Wife entitled to
real estate, when.

SEC. 16. Upon every such dissolution of a marriage as is specified in the preceding section, the court may make a further decree for restoring to the wife the whole, or such part as it shall deem just and reasonable of the personal estate that shall have come to the husband by reason of the marriage, or for awarding to her the value thereof, to be paid by her husband in money.

Further decree.

SEC. 17. Upon every divorce for adultery committed by the husband, when any personal estate of the wife, or money in lieu thereof, shall be awarded to her, as provided in the preceding section, the court, instead of ordering the same to be delivered or paid into the hands of the wife, may order it to be delivered or paid into the hands of a trustee or trustees, to be appointed by the court upon trust, to invest the same and to apply the income thereof to the support and maintenance of the wife and of the minor children of the marriage or any of them, in such manner as the court shall direct.

Trustees.

SEC. 18. When a divorce shall be decreed for the cause

Dower.

of adultery committed by the husband, or misconduct or drunkenness of the husband, or on account of his being sentenced to imprisonment for a term of three years or more, the wife shall be entitled to her dower in his lands in the same manner as if he were dead, but she shall not be entitled to dower in any other case of divorce.

Husband to hold
estate of wife.

SEC. 19. When a divorce shall be decreed for the cause of adultery committed by the wife, the husband shall hold her personal estate for ever, and he shall also hold her real estate so long as they both shall live, and if he shall survive her he shall hold her real estate for his own life, as tenant by courtesy.

Wife to have
subsistence.

SEC. 20. In the case last mentioned the court shall, by the decree, allow the wife for her subsistence as much of her said personal or real estate, or of the income thereof, as such court shall judge necessary.

Security.

SEC. 21. In all cases where alimony or other allowance shall be decreed for the wife or children, the court may require sufficient security to be given by the husband for the payment thereof, according to the term of the decree, and upon the neglect or refusal of the husband to give such security, or upon his failure to pay such alimony or allowance, the court may sequester his personal estate, and the rents and profits of his real estate, and may appoint a receiver thereof, and cause such personal estate, and the rents and profits of such real estate to be applied to the payment thereof.

Decree may be
reserved.

SEC. 22. After a decree for alimony or other allowance for the wife and children or either of them, and also after a decree for the appointment of trustees to receive and hold any property for the use of the wife or children, as before provided, the court may, from time to time, on the petition of either of the parties, revise and alter such decree respecting the amount of such alimony, or allowance or the payment thereof, and is respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any decree respecting any of said matters which such court might have made in the original suit.

SEC. 23. A divorce for the cause of adultery committed by the wife, shall not effect the legitimacy of the issue of the marriage, but the legitimacy of such children, if questioned, may be determined by the court upon the proofs in the case, and in every case the legitimacy of all children begotten before the commencement of the suit, shall be presumed until the contrary is shown.

Legitimacy.

SEC. 24. Upon the dissolution of a marriage on account of the non-age, insanity or idiocy of either party, the issue of the marriage shall be deemed to be, in all respects, the legitimate issue of the parent, who, at the time of the marriage was capable of contracting, or if neither parent be of the age, then of the eldest parent.

Issue of which parent.

SEC. 25. When a marriage is dissolved on account of a prior marriage of either, and it shall appear that the second marriage was contracted in good faith and with the full belief of the parties that the former wife or husband was dead, or that one of the parties was ignorant of the fact that the other had a wife or husband living, the fact shall be stated in the decree of divorce or nullity, and the issue of such second marriage, born or begotten before the commencement of the suit, shall be deemed to be legitimate issue of the parent, who, at the time of the marriage was capable of contracting.

Prior marriage

SEC. 26. Upon the dissolution by decree of nullity of any marriage that is prohibited on account of consanguinity between the parties, or of any marriage between a white person and a negro, or a Mongolian, the issue of the marriage shall be deemed to be illegitimate.

Issue when illegitimate.

SEC. 27. If any persons, after being divorced from the bonds of matrimony, for any cause whatever, shall cohabit together, they shall be liable to all the penalties provided by law against adultery.

Adultery.

SEC. 28. A bill to annul a marriage on the ground that one of the parties was under the age of legal consent, may be exhibited by the parent or guardian entitled to the custody of such minor, but in no case shall such marriage be annulled on the application of a party who was of the age of

Marriage when not annulled.

legal consent at the time of the marriage, nor when it shall appear that the parties, after they had attained the age of consent, had freely cohabited as man and wife.

Insanity or idiocy.

SEC. 29. A bill to annul a marriage on the ground of insanity or idiocy, may be exhibited by any person admitted by the court to prosecute as the next friend to such idiot or lunatic.

Sentence of nullity, when decreed.

SEC. 30. The marriage of a lunatic may also be declared void upon the application of the lunatic after the restoration of reason, but in such cases no sentence of nullity shall be pronounced, if it shall appear that the parties freely cohabited as husband and wife after the lunatic was restored to a sound mind.

Force or fraud.

SEC. 31. If there shall be any issue of a marriage annulled on the ground of force or fraud, the court shall decree their custody to the innocent person, and may also decree a provision for their education and maintenance out of the estate and property of the guilty party.

Incapacity.

SEC. 32. A suit to annul a marriage on the ground of the physical incapacity of one of the parties, shall only be maintained by the injured party against the party whose incapacity is alleged, and shall in all cases be brought within two years from the solemnization of the marriage.

Evidence.

SEC. 33. No decree of divorce, and of the nullity of a marriage, shall be made solely on the declarations, confessions or admissions of the parties, but the court shall, in all cases, require other satisfactory evidence of the facts alleged in the bill for that purpose.

Divorce, when decreed.

SEC. 34. In any suit brought for divorce on the ground of adultery, although the fact of adultery be established, the court may deny a divorce in the following cases :

First, When the offense shall appear to have been committed by the procurement, or with the connivance of the complainant.

Second, When the offense charged shall have been forgiven by the injured party, and such forgiveness be

proved by express proof, or by the voluntary cohabitation of the parties with the knowledge of the offense.

Third. When there shall have been no express forgiveness, and no voluntary co-habitation of the parties, but the suit shall not have been brought within three years after the discovery by the complainant of the offense charged.

SEC. 35. If any married woman, at the time of exhibiting a bill against her husband, under the provisions of this chapter, shall reside in this territory, she shall be deemed a resident thereof, although her husband may reside elsewhere. Married women, when a resident.

SEC. 36. All acts and parts of acts inconsistent with the provisions of this act, are hereby repealed. Repeals.

SEC. 37. This act to take effect and be in force from and after the first day of January, one thousand eight hundred and seventy.

JURIES.

CHAPTER 11.

AN ACT TO PROVIDE FOR SELECTING, SUMMONING AND IMPANELLING JURORS.

Be it enacted by the Council and House of Representatives of the territory of Wyoming:

SEC. 1. All male citizens residing in any of the counties of this territory, having the qualifications of electors, and of sound mind and discretion, and not being judges of the supreme court or district court, clerks of the supreme and district courts, sheriffs, coroners, or jailors, or subject to any bodily infirmity amounting to a disability, and who have not been convicted of a criminal offense punishable by [the] imprisonment in the penitentiary, and are not subject to disability for the commission of any offense which by special provision Who may be jurors.

Proviso.

of law does or shall disqualify them, are and shall be competent persons, to serve on all grand and petit juries within their counties respectively: *Provided*, That persons over fifty years of age, ministers of the gospel, probate judges, county commissioners, licensed attorneys, practicing physicians, postmasters and carriers of the United States mails and all employees of any railroad company whose services are liable to be required in prosecuting the business of the road during the term of the court, shall not be compelled to serve as jurors.

Members of fire
companies ex-
empt.

SEC. 2. There shall also be exempt from serving as jurors, any person whose name appears as one of the first forty on the roll book of members of any organized fire or hook and ladder company in any incorporated city or town within this territory.

Firemen to fur-
nish copy of
names.

SEC. 3. The names of persons claiming the benefit of exemption from jury duty under the provisions of the preceding section, shall be transmitted to the board of county commissioners for the county where they reside, prior to the time of said commissioners selecting the names of the jury as herein provided by the foreman of the respective companies to which said classes of persons belong.

Grounds for
ex-use.

SEC. 4. Any person may also be excused from serving on a jury when it shall appear to the court that the interest of such juror or those of the public will be materially injured by his attendance, or when the state of his own health or that of any member of his family requires his absence.

Sixty persons
to be selected.

SEC. 5. In each of the counties of this territory wherein a district court is appointed or directed to be holden, the county commissioners of the county shall, at least thirty days before the first day of the session of the court, meet together, or any two of them may meet and select sixty persons possessing the qualifications prescribed in the preceding section, and as nearly as may be, a proportionate number from each precinct in the county.

Persons not to
serve two terms
in succession.

SEC. 6. In making such selection, the board of county commissioners shall not select any of the same persons who

actually served as jurors at the preceding term, and if any such persons shall be drawn and returned to serve as petit jurors, it shall be the duty of the court to strike the names of such persons from the list of jurors and direct the sheriff to fill up the list from among the neighboring citizens qualified to serve as jurors under the provisions of this act.

SEC. 7. Certified lists of the persons so selected to serve as jurors, shall be placed in possession of the county clerk. Lists.

SEC. 8. On receiving such lists, the county clerk shall file the same in his office, and shall write down the names contained therein on separate pieces of paper (so as to conceal the names) of the same size and appearance as nearly as may be, and shall fold up each of such pieces of paper and deposit them in a box to be kept by him for that purpose, to be labelled "jury box." Lists to be filed and names to be deposited in jury box.

SEC. 9. At least fifteen days before any term of the court at which a petit jury shall be required by law, or a grand jury ordered by the court, the county clerk of the county where such court is to be held, shall draw from the jury box the names of fifteen persons to serve as grand jurors and the names of twelve persons to serve as petit jurors. To be drawn fifteen days before term.

SEC. 10. At least five days before the drawing of such jurors, the county clerk shall give notice to the sheriff and two justices of the peace of said county, of the day and hour when such drawing will take place. Notice five days before drawing.

SEC. 11. At the time so appointed, it shall be the duty of the sheriff of the county, in person or by his under sheriff, and the justices aforesaid, to attend at the county clerk's office of the county to witness such drawing, and if any two of said officers shall attend at the time and place appointed, the clerk shall proceed in their presence to draw the jurors. At least two officers to be present.

SEC. 12. If two of the officers so notified do not appear, the county clerk shall adjourn the drawing of such jurors until the next day, and shall by written notice require any Adjournment.

justice of the peace of the county to attend such drawing on the adjourned day.

Clerk to draw,
when.

SEC. 13. If at the adjourned day any two of the officers notified to attend the drawing of such jurors, shall appear, but not otherwise, the county clerk shall proceed in the presence of the officers so appearing to draw the jurors.

Manner of
drawing.

SEC. 14. The county clerk shall conduct such drawing as follows:

First, He shall shake the box containing the names of jurors returned to him, from which jurors are required to be drawn, so as to mix the slips of paper upon which such names were written, as much as possible.

Second, He shall then publically draw out of the box as many of said slips of paper containing such names, as shall be required by law, or specially ordered by such court.

Third, A minute of the drawing shall be kept by one of the attending officers, in which shall be entered the names contained on every slip of paper so drawn before any other slip of such kind shall be drawn.

Fourth, If, after the drawing, the whole number required for grand and petit jurors, the name of any person shall appear to have been drawn who is dead or become insane, or who has permanently removed from the county, to the knowledge of the clerk or any other attending officer, an entry of such fact shall be made in the minute of the drawing, and the slip of paper containing such name shall be destroyed.

Fifth, Another name shall be drawn in place of that contained on the slip of paper so destroyed, which shall in like manner be entered in the minute of the drawing.

Sixth, The same proceedings shall be had as often as may be necessary until the whole number of jurors required shall have been drawn.

Seventh, The minute of the drawing shall then be signed by the clerk and the attending officers, and filed in the clerk's office.

Eighth, Separate lists of the names of the persons so drawn for petit jurors, with their place of residence, and

specifying for what court they were drawn, shall be made and certified by the clerk and the attending officers to the clerk of the court for which they were drawn.

SEC. 15. The clerk of the court shall, within one day after receiving the list so drawn, issue an order to the sheriff, deputy sheriff, or coroner, as the case may be, commanding him to summon the persons whose names are drawn to appear before the district court at or before the hour of eleven o'clock on the morning of the first day of the term, stating in the order, the day of the week and month, and the place of the sitting of the court, to serve as grand jurors, and a like order commanding the sheriff, deputy sheriff or coroner to summon the petit jurors. Order issued to sheriff.

SEC. 16. The sheriff, deputy sheriff or coroner, having received the order shall, at least five days before the first day of the session of the court, serve upon each person whose name was selected and drawn as grand juror, a true copy of the command, except that the copy shall contain only the name of the grand juror served, and not the name of any other grand juror, and the sheriff, deputy sheriff or coroner, shall, at least five days before the first day of the session of the court, in like manner, summon each person whose name was selected and drawn as petit juror, and such service shall be made by reading or delivering the copy to the person to be summoned, or by leaving the copy at his residence. Jurors to be served five days before term.

SEC. 17. Each grand juror and petit juror summoned, shall appear before the court on the day, and at the hour specified in the summons, and shall not depart without leave of court. Each juror to appear at the time specified.

SEC. 18. The sheriff, deputy sheriff or coroner, having received the order of service issued by the clerk, shall make return thereof with his proceedings to the clerk, before the session of the court. Return.

SEC. 19. If any person summoned to appear as grand juror or petit juror, fails, refuses, or neglects to appear, such person shall be considered guilty of contempt of the court, and may be fined by the court in any sum not less than five Failure to appear.

dollars nor more than fifty dollars, and if any person when a second order or attachment is issued, neglects or refuses to appear, such person may be fined as above provided, and imprisoned by the court not longer than ten days in the county jail, and if the county commissioners in any county neglect and fail to select and furnish to the clerk the names of persons as herein before provided, such person so offending may be fined by the court not less than five dollars nor more than fifty dollars, and if any clerk of the district court, or deputy clerk, or sheriff, deputy sheriff or coroner, neglect or fail to perform the duties imposed by this act, the person so offending shall be considered guilty of contempt of court, and may be fined by the court, not less than five dollars nor more than fifty dollars, and if guilty of gross misconduct in office, and contempt, may be imprisoned by the court not longer than thirty days in the county jail.

Failure of
county commis-
sioners to select.

Corrupt action
of sheriff.

SEC. 20. If a sheriff or other officer corruptly or through favor, or ill-will, summon a juror with the intent that such juror shall find a verdict for or against either party, or shall summon a grand juror from like motive, with intent that such grand juror shall or shall not find an indictment or presentment against any particular individual, he shall be fined not exceeding five hundred dollars, and forfeit his office, and be forever disqualified from holding any office in this territory.

Panel not com-
plete.

SEC. 21. Whenever at any general or special term of the district court, or at any period during such term for any cause, the panel of grand or petit jurors is not complete, the court may order the proper officer to summon without delay, good and lawful men from the body of the county, to complete the panel.

No panel.

SEC. 22. When, for any cause, there is no panel of grand or petit jurors, the court may order the county clerk, or his deputy, together with the probate judge, or a justice of the peace, to furnish the clerk of the court with forty names, or if there is to be a panel of both grand and petit jurors, then sixty names of persons qualified as jurors, and the clerk of the court shall immediately write such names on separate slips of paper, and put the same

into a box, and after well mixing the same, he and the sheriff or coroner shall draw by chance the requisite number of names. If both grand and petit jurors are to be drawn, the first names drawn shall constitute the grand jury, the clerk shall thereupon issue to the sheriff or coroner, a venire for said jurors.

Formation of Juries in Civil Cases.

SEC. 23. When the action is called for trial by jury, ^{Jury how} _{formed.} the clerk shall prepare separate ballots containing the names of the jurors summoned, who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn, shall constitute the jury. If the ballots become exhausted before the jury is complete, or if from any cause a juror or jurors be excused or discharged, the sheriff shall summon, under the direction of the court, from the citizens of the county, and not from the bystanders, so many qualified persons as may be necessary to complete the jury. The jury shall consist of twelve persons unless the parties may consent to any number not less than four. Such consent shall be entered by the clerk in the minutes of the trial.

SEC. 24. As soon as the jury is completed, an oath or ^{Oath.} affirmation shall be administered to the jurors, in substance that they, each of them, will well and truly try the matter in issue between ————— the plaintiff, and ————— the defendant, and a true verdict render, according to the evidence. After the oath or affirmation has been administered and the jury has been fully impaneled, it shall be the duty of the court to order the jury into the custody of the sheriff, or other officer selected by the court, and the jurors shall not be allowed to separate or depart from the custody of the sheriff, or other officer, until they have been duly discharged, unless by the consent of the parties to the action. ^{Sheriff to have} _{charge of jury} It shall be the duty of the sheriff to prepare suitable and comfortable apartments, and prepare food for the jury pending the trial.

SEC. 25. Either party may challenge the jurors, but ^{Challenges.} when there are several parties on either side, they shall join

in a challenge before it can be made, unless the court otherwise order or direct. The challenge shall be individual jurors, and shall either be peremptory or for cause. Each party shall be entitled to four peremptory challenges.

Cause of chal-
lenge.

SEC. 26. Challenges for cause may be taken on one or more of the following grounds:

First, A want of any of the qualifications prescribed by statute to render a person competent as a juror.

Second, Consanguinity or affinity within the third degree to either party.

Third, Standing in the relation of debtor or creditor, guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of the family of either party, or a partner united in business with either party, or being security on any bond or obligation for either party.

Fourth, Having served as a juror or been a witness in a previous trial between the same parties, for the same cause of action, or being then a witness therein.

Fifth, Interest on the part of the juror in the event of the action or in the main question involved in the action, except the interest of the juror as a member or citizen of a municipal corporation.

Sixth, Having formed or expressed an unqualified opinion or belief as to the merits of the action or the main question involved therein, provided that the reading of newspaper accounts of the subject matter before the court, shall not disqualify the juror either for bias or opinion.

Seventh, The existence of a state of mind in the juror evincing enmity against, or bias to either party.

Trial of chal-
lenge.

SEC. 27. Challenge for cause shall be tried by the court. The juror challenged, and any of the persons may be examined as a witness on the trial of the challenge.

SEC. 28. This act to take effect, and be in force on and after the first day of January, one thousand eight hundred and seventy.

Approved 7th December, 1869.

GAME LAW.

CHAPTER 12.

AN ACT ENTITLED AN ACT FOR THE PROTECTION OF GAME AND FISH IN THE
TERRITORY OF WYOMING.

*Be it enacted by the Council and House of Representatives
of the Territory of Wyoming:*

SEC. 1. It shall be unlawful for any person or persons to offer for sale any elk, deer, antelope, mountain sheep, or young of their kind, between the first day of February, and the fifteenth day of August in each year. Time when unlawful to sell elk, &c.

SEC. 2. It shall be unlawful for any person or persons to kill, trap, or ensnare, any pheasant, quail, prairie hen or prairie chicken, or sage hen, in this territory, from the first day of February until the fifteenth day of August in each and every year. Time when unlawful to kill quail, &c.

SEC. 3. It shall be unlawful for any person or persons to take, ensnare or trap trout in the waters and streams of this territory otherwise than by hook and line or such other mode by which fish can be singly obtained. Manner of taking trout.

SEC. 4. Any person who shall violate any section or sections of this act, shall forfeit and pay the sum of fifty dollars, one-fourth to go to the informer and the remainder to the public schools within the county where the offense was committed, to be recovered in any action of debt, in the name of the complainant and the people of Wyoming territory. Forfeiture.

SEC. 5. Non-payment of the fine and penalty of this act shall subject the offender to sixty days imprisonment in Non-payment.

the common jail or place of imprisonment belonging to the county in which the provisions of this act have been violated.

SEC. 6. This act shall take effect and be in force from and after its passage.

Approved first December, 1869.

DEEDS, MORTGAGES, BONDS, &c.

CHAPTER 13.

AN ACT TO PROVIDE FOR THE RECORDING OF DEEDS, MORTGAGES, BONDS, CONTRACTS, AGREEMENTS, &c.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming :

§ Deeds, &c., to be recorded.

SEC. 1. All deeds, mortgages, bonds, contracts, agreements, or other instrument concerning any interest in lands in this territory, made in writing under seal, attested by two witnesses and acknowledged before some person authorized by law to take acknowledgments of deeds, shall be recorded in the office of the register of deeds of the county where the land lies, within three months of the date of such instrument.

Duties of Register of deeds.

SEC. 2. It shall be the duty of the register of deeds of each county within this territory, to receive and record at length all such deeds, bonds, mortgages, contracts, and agreements, as shall be left with him for that purpose.

Instrument recorded to be notice to purchasers.

SEC. 3. Each and every instrument touching any interest in lands made and recorded according to the provisions of the first section of this act, shall be notice to, and take precedence of any subsequent purchaser or purchasers from the time of delivering said instrument at the office of the register of deeds for record.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved, Dec. 4th, 1869.

POISONS.

CHAPTER 14.

AN ACT REGULATING THE SALE OF POISONS IN THE TERRITORY OF WYOMING.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SEC. 1. No druggist, apothecary or other persons dealing ^{Poison when sold, to be labeled.} or trafficking in drugs or medicines, shall sell or give away any poison or poisonous substance (except upon the order or written prescription of a practicing licensed physician), without attaching to the phial, box or parcel containing such poisonous substances, a label with the word "poison" printed or written upon it, together with the name of such poison written or printed thereon in plain and legible characters.

SEC. 2. Any person violating this act, shall, upon ^{Fine for violation.} conviction, be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding fifty dollars.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved 3d December, 1869.

COMMON LAW.

CHAPTER 15.

AN ACT ADOPTING THE COMMON LAW OF ENGLAND AND CERTAIN DECLARATORY AND REMEDIAL STATUTES OF SAID KINGDOM.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SEC. 1. The common law of England as modified by ^{Common law of England.} judicial decisions, so far as the same is of a general nature

and not inapplicable, and all declaratory or remedial acts or statutes made in aid of or to supply the defects of the common law prior to the fourth year of James the first, (excepting the second section of the sixth chapter of forty-third Elizabeth, the eighth chapter of thirteenth Elizabeth, and ninth chapter of thirty-seventh Henry eighth) and which are of a general nature, and not local to England, shall be the rule of decision in this territory when not inconsistent with the laws thereof, and shall be considered as of full force, until repealed by legislative authority.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved, Dec. 2nd, 1869.

TELEGRAPH COMPANIES.

CHAPTER 16.

AN ACT TO PROTECT THE PROPERTY OF TELEGRAPH COMPANIES.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

Penalties for
injuring tele-
graph lines.

SEC. 1. That any person, who shall wilfully cut down or burn, or otherwise materially injure any telegraph pole, or shall shoot so as to materially injure any insulator or knock said insulator loose from the pole to which it is attached, or otherwise materially injure such insulator, or who shall shoot any telegraph wire, thereby breaking said wire, or who shall otherwise wilfully cut, break, or injure such wire, shall upon conviction thereof, be fined not less than twenty-five nor more than one hundred dollars, and in case of failure to pay such fine, shall be imprisoned in the county jail one day for every two dollars of such fine.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved, Dec. 2nd, 1869.

JAILS.

CHAPTER 17.

AN ACT CONCERNING JAILS.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SEC. 1. That there be established and kept in every organized county of this territory, by the board of county commissioners at the expense of the county, as hereinafter provided, a jail for the safe keeping of prisoners lawfully committed. Jail to be kept in every county.

SEC. 2. The grand jury, at each term of the district court, shall make personal inspection of the county jail, as to the sufficiency of the same for the safe keeping of prisoners, their convenient accommodation and health, and shall inquire into the manner in which the same has been kept since the last term; and the court shall give this in charge to the grand jury, and it shall be imperative on the board of county commissioners to issue the necessary orders, or cause to be made the necessary repairs in accordance with the complaint or recommendation of the grand jury. Grand jury to inspect jail.

SEC. 3. The sheriff of the county by himself or deputy, shall keep the jail, and shall be responsible for the manner in which the same is kept; he shall keep separate rooms for the sexes, except when they are lawfully married; he shall supply bread, meat, drink and fuel, for the prisoners. Repairs, who to make.

SEC. 4. When a prisoner is committed for crime or in any suit on behalf of the territory, the county commission- Jail, who to keep and how. Charges how &c.

ers, shall allow the sheriff his reasonable charges for supplying such prisoner.

Documents delivered to successor.

SEC. 5. All instruments, writs, or process of any kind, or attested copies thereof, by which any prisoner may be committed or liberated, shall be regularly indorsed and filed in some suitable and safe place, and all such documents shall be delivered to the successor of the officer having charge of the prisoner or succeeding to the office of sheriff.

What provided for prisoners.

SEC. 6. It shall be the duty of the sheriff to provide such bed clothing, frames and sacks for beds, night buckets, suitable means for warming the jail, medical attendance and nursing when required, and such other necessities for the comfort and welfare of said prisoners as the grand jury may recommend, and the expenses thereof shall be audited and settled by the county commissioners as in the case of other general county expenses.

Jail visited each month.

SEC. 7. It shall be the duty of the sheriff to visit the jail in person at least once in each month, unless absent from the county, and examine into the condition of each prisoner, and at least once during each term of the district court; and it is hereby made the duty of the sheriff to cause all the cells and rooms used for the confinement of prisoners, to be thoroughly cleansed and whitewashed at least three times in each year.

No spirituous liquors in the building.

SEC. 8. No spirituous liquors shall, on any pretense whatsoever, be sold within any building used and established as a jail; nor shall any spirituous liquors be conveyed into any jail for the use of any person confined therein, or be furnished to any prisoner, unless the same be certified to be absolutely necessary for the health of such prisoner, by some reputable physician, who shall specify the quantity and quality of the liquor that may be furnished to any prisoner, the name of the prisoner for whom, and the time when the same may be furnished.

Fine or imprisonment.

SEC. 9. Every person who shall sell, bring or convey into any jail, any spirituous liquors, contrary to the provisions of section eight of this act, and every sheriff or keeper of a jail, or any other officer or person employed in or about

such jail, who shall knowingly suffer or permit any spirituous liquor to be sold or used in a jail, contrary to the foregoing provisions, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment for not less than one month nor more than one year, or by a fine of not less than fifty dollars nor more than five hundred dollars.

SEC. 10. Every sheriff or keeper of a jail to which any prisoner may be committed by any marshal or other officer of the United States, shall be answerable for the safe keeping of such prisoner according to the terms of such commitment; and the money paid by the United States for the use of such jails shall be credited and appropriated to the general fund of the county wherein such jail is situated.

United States
prisoners.

SEC. 11. Whenever by reason of any jail being on fire, or any building contiguous or near to a jail being on fire, there shall be reason to apprehend that the prisoners confined in such jail may be injured or endangered by such fire, the sheriff or keeper of such jail, may at his discretion, remove such prisoners to some safe and convenient place, and there confine them so long as may be necessary to avoid such danger; or if the jail be destroyed, until some other place may be provided by the county commissioners for their safe keeping.

Removal of pris-
oners in case of
fire.

SEC. 12. Any sheriff or other officer who shall have arrested any prisoner or prisoners, may pass over, across and through any county or counties that may be in the ordinary route of travel from the place where such prisoner shall have been arrested, to the place where he is to be conveyed and delivered; and such prisoner or prisoners so conveyed, and the officers having them in custody, shall not be liable to arrest on any civil process while passing through such county or counties.

Non-liability
to arrest.

SEC. 13. If any person confined in any jail, shall be refractory or disorderly, or shall wilfully or wantonly destroy, or injure any article of bedding or other furniture, or any part of the prison, the sheriff may, after due inquiry, cause such person to be kept in solitary confinement not more than five days for any one offense; and during such confinement, such prisoner shall be fed with bread and water

Refractory
persons.

only, unless other food be absolutely necessary for the preservation of his health.

Juvenile prisoners.

SEC. 14. Juvenile prisoners shall, whenever practicable, be kept in apartments separate from elder prisoners; and the visits of parents and friends who desire to exert a moral influence over them, shall, at all reasonable times, be permitted.

Jail register.

SEC. 15. The sheriff or other officer performing the duties of sheriff, of each county in this territory, shall procure at the expense of the county, a suitable book, to be called a jail register, in which the sheriff, by himself or his jailor, shall enter,

First, The name of each prisoner, with the date and cause of his or her commitment.

Second, The date and manner of his or her discharge.

Third, What sickness, if any, has prevailed in the jail during the year.

Fourth, The practice observed during the year, of whitewashing and cleansing the cells or apartments, and the times and seasons for doing so.

Fifth, The habits of the prisoners as to cleanliness, diet and order, and such other matters as may be directed by the grand jury, or as may in the discretion of the sheriff be deemed proper. The register so directed to be kept, shall be delivered by the sheriff to his successor in office.

Method of procedure when a jail is to be built.

SEC. 16. Whenever the board of county commissioners of any organized county in this territory, shall deem it for the interest of such county to have a jail constructed therein, they shall cause plans and specifications therefor to be prepared by some competent architect, for a jail, to cost not more in any case than five thousand dollars; and after such plans and specifications are prepared, and adopted by the board of commissioners, they shall deposit the same in the office of the register of deeds for the county, where such plans and specifications shall be open and free to the inspection of any and all persons; and such board of county commissioners shall give notice that they will receive sealed proposals for the building of such jail, according to such plans and

specifications, by publication in a newspaper once each week for four consecutive weeks in any newspaper published within the county, if there be one, if not, then they shall cause at least five such notices to be posted in as many of the most public places of the county; such notices shall be to the effect that the commissioners will, until a day specified therein, not less than thirty days from publication of said notice, receive sealed proposals for the building of such jail, in whole or in parts, as to them shall seem to be for the best interests of the county; *Provided*, That the time occupied in building and completing such jail, shall in no case exceed six months from date of commencement of work on the same, which date shall be specified in the bids offered for such contract. Proposals shall be handed to the register of deeds for the county in and for which such work is to be performed.

SEC. 17. On the day appointed for the opening of such bids, the county commissioners shall meet and open and declare the same in public, and shall award the contract or contracts to the lowest bidder, who shall furnish security in double the amount of his contract, to the satisfaction of the board of commissioners, for the execution and completion of such contract.

Bids opened
and awarded in
public to lowest
bidder.

SEC. 18. The bids above provided for, shall be accompanied by the guarantee of two or more responsible persons, that if the contract be awarded to the bidder, he will enter into the requisite bonds for the faithful performance of such contract.

Guarantee.

SEC. 19. One-half of the cost and expense of building such jail shall be paid in U. S. currency, six months from the date of the contract for such work, the remaining half of the cost and expense of building such jail, shall be paid within one year from the completion of said jail.

When, and how
paid.

SEC. 20. For the purpose of constructing and paying ^{Special tax.} for jails as provided in this act, the board of county commissioners of the organized counties of this territory, are hereby authorized and empowered to levy a special tax or taxes for that purpose, in addition to the tax authorized by

the "act to provide a territorial and county revenue;" *Provided*, That no special tax as provided in this act, shall be levied until after the return of the assessment roll to the county commissioners for the regular assessment for the year 1870.

SEC. 21. This act shall take effect and be in force from and after its passage.

Approved, 9th December, 1869.

LICENSES.

CHAPTER 18.

AN ACT CONCERNING COUNTY LICENSES.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

Duties of sheriff.

SEC. 1. It shall be the duty of the sheriff of each county of this territory to furnish all licenses, and collect all moneys for the same, as hereinafter provided, and if the sheriff of any county of this territory shall knowingly permit any person subject to such license to conduct or carry on any branch of business, occupation or pursuit, without first obtaining such license, such sheriff shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided by law in the case of similar offenses.

Licenses, by whom prepared and what contain.

SEC. 2. Licenses shall be prepared by the county clerk, which shall be delivered to the sheriff of the county wherein they shall be issued; and each license shall contain the name of the person and the character and place of business to be conducted under such license, and it shall be the duty of the county clerk to affix his official signature and the seal of the county to such license, which license shall be countersigned by the county treasurer or his deputy before being issued by the sheriff, and all moneys collected under and for such license shall be paid by the sheriff into the

county treasury within fifteen days from the date of said license.

SEC. 3. It shall be the duty of the county clerk to keep on file in his office, and submit for the inspection of the county commissioners at each of their regular sessions, a faithful and correct abstract, containing full information of all licenses so issued to the sheriff; and neglect to comply with the provisions of this section shall be deemed a misdemeanor, and shall be punished as provided by law.

Duties of clerk

SEC. 4. It shall be the duty of the county treasurer of each county to furnish to the county commissioners, at each of their regular sessions, a full and complete statement of all moneys received for licenses issued, as provided in the foregoing section of this act; failure or neglect on the part of the treasurer to comply with the provisions of this section, shall be deemed a misdemeanor, and shall be punished as provided by law.

Duties of treasurer.

SEC. 5. All moneys collected for licenses as provided for by this act, shall constitute a portion of and be credited to the general county fund.

County fund.

SEC. 6. No auctioneer, peddler, or other person or persons, company or corporation, shall be permitted to sell, vend, barter or retail either at private sale or public auction, any goods, wares or merchandise, without first having obtained a license therefor as hereinbefore provided.

Who must have license.

SEC. 7. Any person found selling at auction or peddling without a license, as provided for in section six of this act, shall be guilty of a misdemeanor; and the person so actually vending or peddling is liable, whether he be the owner of the goods or not, and upon conviction thereof, shall forfeit and pay any sum not exceeding one hundred nor less than twenty dollars, into the county treasury where such conviction shall be had, to be recovered by civil action in the name of the county prosecuting the same, which said sum may be collected as provided by law in criminal cases.

Liability and forfeiture.

SEC. 8. If any person or persons, company or corporation, shall directly or indirectly, keep a store, or sell, vend or retail any goods, wares or merchandise without

Corporations.

being first duly authorized by license as hereinbefore provided, the person or persons, company or corporation so offending, shall forfeit and pay any sum as provided in section seven of this act; *Provided*, this section shall not be construed to extend to the sale of goods, wares or merchandise by merchants who pay an annual tax upon merchandise assessed according to the revenue laws of this territory, nor to persons who sell goods manufactured, or commodities produced by cultivation of the soil within this territory. *Provided further*, that the provisions of this section shall not apply to the products of the farm and dairy of any other state or territory.

Proviso.

Spirituous
Liquors.

SEC. 9. No person or persons in any county of this territory shall be permitted to vend, sell, barter or dispose of for pecuniary benefit or advantage, either directly or indirectly, in person or by agent or employe, any spirituous malt or fermented liquors or wines, in less quantities than one quart, without first obtaining a license or permit therefor as provided for in this act; and any person or persons found dealing in liquors as aforesaid, without having first obtained a license therefor, shall forfeit and pay the sum double the amount of such license for three months, for each and every offense, together with costs of suit. One-half of said fine shall be paid by the court receiving such fine, to the person giving the information, the remaining half to be paid into the county treasury: *Provided further*, That all persons engaged in selling liquors by the barrel, case or in the original package, and not in quantities of less than one quart, shall pay an annual county license therefor of forty dollars.

Forfeiture.

Proviso.

SEC. 10. License granted for retailing liquors, as provided in this act, shall not authorize the persons obtaining the license to vend, sell, barter or dispose of such liquors, in more than one place or house, and such place and house shall be fully described in such license; *Provided*, That the licensee shall be entitled to retail liquors in two or more places by paying a license for each place where such business is conducted.

SEC. 11. Whenever any person or persons having a retail liquor license shall suffer or permit any disorder, disturbance of the public peace, drunkenness or unlawful games or practices, or violations of any law whatsoever, in his, her or their house or place for which such license shall be granted, such person or persons shall forfeit said license, and such license shall not be renewed for three months thereafter.

Forfeiture for disorder.

SEC. 12. No person or persons, company or corporation shall be permitted to open any theatre, circus, menagerie or caravan, or to give any exhibition or entertainment of serenaders, minstrels, or opera or concert singers, or lecture, readings or recitations or show of figures, or wire or rope performances, or sleight of hand performances, or other exhibitions or performances not herein enumerated, for hire, or where an entrance fee is charged or collected, without first obtaining a license therefor, as provided in this act; *Provided*, No license shall be required for any concert, fair, festival or other entertainment opened, held or given exclusively for the benefit of any church built or to be built within this territory.

Theatre, circus &c.

License for all exhibitions.

Provided.

SEC. 13. No person or persons, company or corporation shall be permitted to open or establish any "wheel of fortune," gift enterprise or scheme of any character, whereby prizes, premiums or any thing or representative of value are offered, advertised or represented to be drawn, paid, given or distributed by chance, without first paying to the sheriff of the county one hundred dollars for a quarterly license therefor; *Provided*, That no license as provided in this act shall be issued for less than three months.

Lotteries.

Provided.

SEC. 14. Any person or persons owning or keeping a billiard table, or table not exclusively for private use of the owner or of his family, shall be required to pay a license of five dollars per quarter year on each such table so owned or kept; for each nine or ten pin or bowling alley, the owner, lessee or manager thereof, shall be required to pay a license of ten dollars per quarter year; each pawn broker shall be required to pay a license of one hundred dollars per quarter year,

Billiard tables, bowling alleys, &c.

and each keeper of an intelligence office shall be required to pay a license of fifteen dollars per quarter year; the license money provided for in this section to be collected as provided for other licenses in this act.

Fines.

SEC. 15. Every magistrate or other officer to whom any fines imposed by this act shall be paid for the use of the county, shall at each regular meeting of the board of county commissioners make a report of the total amount so collected, and all fines so collected shall be paid into the county treasury within thirty days after collection thereof.

Officers refusing to comply.

SEC. 16. Any magistrate or other officer neglecting, omitting or refusing to comply with the provisions of section fifteen of this act, shall be guilty of a misdemeanor, and shall be punished as provided by law.

Prosecutors may be witnesses.

SEC. 17. Persons prosecuting or giving information under the provisions of this act, may be competent witnesses on the trial thereof, notwithstanding their interest in the penalty to be recovered.

Penalties, how recovered.

SEC. 18. Penalties incurred by a violation of the provisions of this act, may be recovered by action of debt or by indictment in the name of the people of the territory of Wyoming.

Licenses returned.

SEC. 19. If any sheriff fail, from causes not within his control, to collect the amount payable on any license issued as provided in section one of this act, after such license has been issued, such license shall be returned to the county treasurer within twenty days after the issuance thereof, and it shall be the duty of said county treasurer to note the fact of such failure to collect, and to return the license to the office of the county clerk, at the next regular session of the board of county commissioners, said license shall be cancelled or destroyed by said board of commissioners.

Peddlers pay five dollars per month.

SEC. 20. Peddlers, auctioneers and other persons as provided in sections six and seven of this act, shall pay a county license of five dollars per month.

Persons selling liquors.

SEC. 21. Any person or persons selling liquors, as provided in section nine of this act, shall pay an annual license of one hundred dollars for such privilege; *Provided*,

That all persons engaged in retailing liquors as aforesaid, in connection with hotel or eating accommodations and entertainment for travelers, at any point distant ten miles or more from the limits or boundaries of any city, town, village or railway station, within this territory, shall not be required to pay a quarterly license of more than fifty dollars.

SEC. 22. Any person or persons, company or corporation, opening any exhibition as provided in section twelve of this act, shall be required to pay a license of not more than fifty, nor less than ten dollars for each day of such exhibition.

Provided,

SEC. 23. This act shall take effect and be in force on and after its passage.

Approved, December 9th, 1869.

PROTECTION TO MARRIED WOMEN.

CHAPTER 19.

AN ACT TO PROTECT MARRIED WOMEN IN THEIR SEPARATE PROPERTY AND THE ENJOYMENT OF THE FRUITS OF THEIR LABOR.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SEC. 1. That all the property both real and personal, belonging to any married woman as her sole and separate property, or which any woman hereafter married owns at the time of her marriage, or which any married woman during coverture acquires in good faith from any person other than her husband, by descent or otherwise, together with all the rents issues, increase and profits thereof, shall, notwithstanding her marriage, be and remain during coverture, her sole and separate property, under her sole control, and be held, owned, possessed and enjoyed by her the same as though she were sole and unmarried, and shall not be subject to the disposal, control or interference of her husband, and shall be exempt

Married women may hold property.

from execution or attachment for the debts of her husband.

Unmarried wo-
men may be-
gain, &c.

SEC. 2. Any married woman may bargain, sell and convey her personal property, and enter into any contract in reference to the same, as if she were sole.

May sue.

SEC. 3. Any woman may, while married, sue and be sued in all matters having relation to her property, person or reputation, in the same manner as if she were sole.

May make a
will.

SEC. 4. Any woman may, while married, make a will the same as though she were sole.

May carry on
business.

SEC. 5. Any married woman may carry on any trade or business, and perform any labor or services on her sole and separate account, and the earnings of any married woman from her trade, business, labor or services, shall be her whole and separate property, and may be used and intrusted by her in her own name; and she may sue and be sued as if sole in regard to her trade, business, labor, services and earnings, and her property acquired by trade, business and services, and the proceeds thereof may be taken on any execution against her, except where the same shall be exempt under the exemption laws of the territory.

Debts of wife
contracted before
marriage.

SEC. 6. Under no marriage hereafter contracted, shall the husband be liable for the debts and the liabilities of the wife contracted before marriage without an assumption in writing of such debts and liabilities.

Judgments.

SEC. 7. When any woman against whom liabilities exist, shall marry, and has or acquires lands, judgments on such liability may be rendered against her and her husband jointly, to be levied on such lands only.

Wife's tort.

SEC. 8. When any judgment is rendered against a husband and wife for the tort of the wife, execution on such judgment shall first be levied on the lands of such wife, if she have any.

Separate deed.

SEC. 9. The separate deed of the husband shall convey no interest in the wife's lands.

SEC. 10. This act shall take effect and be in force from and after its passage.

Approved Dec. 4, 1669.

CRIMINALS, INSANE AND OTHERS.

CHAPTER 20.

AN ACT TO PROVIDE FOR CRIMINALS, INSANE AND CERTAIN OTHER PERSONS

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SEC. 1. In any county in this territory, when it becomes necessary to transport, or transport and provide for any idiot, lunatic, insane, blind, deaf, deaf mute or criminal to any eastern asylum, school or prison, it shall be the duty of the county commissioners of such county, upon proper and satisfactory representation to them, to apply to the governor for pecuniary or other aid in such case. Duty of county commissioners.

SEC. 2. Then, if the governor approve the application, he is hereby authorized to call upon the auditor for a warrant upon the treasurer in favor of the board of county commissioners, sufficient for the purpose, and it shall be placed in the hands of the county commissioners, who shall be officially and personally responsible for the proper application of such fund, as far as they may be able. Auditors warrant.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved 7th December, 1869.

HOMESTEADS.

CHAPTER 21.

AN ACT TO PROVIDE FOR HOMESTEADS IN THE TERRITORY OF WYOMING.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

SEC. 1. Every householder in the territory of Wyoming, Homestead, who entitled to one,

Homestead not
liable for debt.

being the head of a family, shall be entitled to a homestead, not exceeding in value the sum of fifteen hundred dollars, exempt from execution and attachment arising from any debt, contract or civil obligation entered into or incurred after the first day of January, A. D. one thousand eight hundred and seventy.

Exempt, when.

SEC. 2. Such homestead shall only be exempt as provided in the first section of this act, while occupied as such by the owner thereof, or his or her family.

SEC. 3. When any person dies seized of a homestead, leaving a widow, or husband, or minor children, such widow, or husband, or minor children, shall be entitled to the homestead, but in case there is neither widow, husband nor minor children, the homestead shall be liable for the debts of the deceased.

Of what home-
stead may con-
sist.

SEC. 4. The homestead mentioned in this act may consist of a house and lot or lots, in any town or city, or if a farm consisting of any number of acres not exceeding one hundred and sixty acres, so that the value does not exceed fifteen hundred dollars.

May be mort-
gaged.

SEC. 5. Nothing in this shall be construed to prevent the owner and occupier of any homestead from voluntarily mortgaging the same; *Provided*, No such mortgage shall be binding against the wife of any married man, who may be occupying the premises with him, unless she shall freely and voluntarily sign and acknowledge the same, and the officer taking such acknowledgment, shall fully apprise her of her right and the effects of signing such mortgage.

More than fif-
teen hundred dol-
lars.

SEC. 6. When any creditor shall be of the opinion that any homestead provided for in this act is of greater value than fifteen hundred dollars, on filing an affidavit of that fact, with the clerk of the district court, such creditor may proceed against said homestead as in ordinary cases, and if the said household shall sell for more than fifteen hundred dollars and costs, the excess shall be applied to the payment of the demand of such creditor, but in all such cases, the sum of fifteen hundred dollars, free of charge or expense, shall be paid to the owner of the homestead, and in

case the said homestead shall not sell for more than fifteen hundred dollars and costs, the person instituting the proceedings shall pay all the costs of such proceedings, and the said proceeding cease and not effect or impair the rights of the owner of the homestead.

SEC. 7. That in case of the sale of said homestead on execution or otherwise, the proceeds of such sale, not to exceed fifteen hundred dollars, shall be exempt from attachment or levy, on execution, and any subsequent homestead acquired by the proceeds thereof, shall also be exempt from execution or attachment, nor shall any judgment or other claim against the owner of such homestead, be a lien against the same, in the hands of a bona fide purchaser for a valuable consideration.

Approved 7th December, 1869.

MINING.

CHAPTER 22.

AN ACT TO PROVIDE FOR THE DEVELOPMENT OF THE MINING RESOURCES
OF THE TERRITORY.

*Be it enacted by the Council and House of Representatives
of the Territory of Wyoming, as follows:*

SEC. 1. That any ledge, lode or vein of quartz or other rock within this territory, bearing gold, silver, cinnabar or copper, shall be subject to location or pre-emption in claims not exceeding two hundred feet extending along the line of such ledge or lode, together with all its angles and variations for each person locating such claim; *Provided*, The person or persons discovering the ledge or lode may locate one extra claim of two hundred feet, which may be held by one or divided among the several discoverers; *Provided further*, That such claimants are *bona fide* residents of this territory.

Ledge subject
to pre-emption.

Proviso.

Notice filed.

SEC. 2. Any person or persons discovering and claiming any quartz ledge or lode as provided in this act, shall place a notice of such claim upon a substantial stake on such claim upon such ledge or lode, giving thereon date of discovery, name of lode, direction and boundaries of claims and the name or names of the person or persons claiming such ledge or lode; and a copy of said notice shall be filed for record in the office of the recorder of the district, or in the office of the register of deeds for the county, within which such claim may be situated, within fifteen days after the date of such claim having been first located.

Amount expended.

SEC. 3. Any person or persons who may hereafter locate and record a notice of claim on any quartz ledge or lode within this territory, shall be required to expend in actual labor, and actual and permanent improvements thereon, an amount of not less than fifty dollars per annum for each two hundred feet thereof, and in like proportion and manner for every fraction thereof, until title to the same has been obtained from the United States in accordance with the laws of Congress, approved July 26, 1866.

Tenants in common.

SEC. 4. Any association of persons claiming one or more claims of two hundred feet each, on any quartz ledge or lode, shall be considered as tenants in common, in proportion to the number of feet in such lode or ledge, that may be given them in the notice of location, unless otherwise specifically stated; and labor may be performed on any portion of their claim in proportion to the whole number of feet, as provided in section three of this act.

Segregated claims.

SEC. 5. Whenever a lode or ledge is claimed and located by a number of persons, and each individual claim is located as a "segregated" claim, such persons shall be required to perform the necessary amount of labor, or expend other actual improvement on such "segregated" claim, and develop the lode therein; and such "segregated" claims shall be considered as extensions from the original discovery claim on such ledge or lode.

Extensions.

SEC. 6. The person or persons first discovering an "extension" of any ledge or lode shall be entitled to hold

the same in compliance with this act, although notices claiming such extension shall have been previously posted and recorded.

SEC. 7. Claim owners shall be allowed one hundred feet of the surface on each side of their ledge or lode for working purposes, but this shall not interfere with the rights of others to prospect and work distinct veins or spurs. Rights of claim owners.

SEC. 8. Any person or persons engaged in working and developing a mine or claim, shall have the right of way across any and all claims for the purpose of hauling quartz or other materials to and from his or their claim or claims. Right of way.

SEC. 9. When it shall appear that any ledge or lode crosses, intersects or unite with any other ledge or lode, the priority of record shall determine the right of claimants; *Provided*, That in no case where it shall appear that two ledges or lodes have crossed or united, shall the priority of record give any person or persons the privilege of diverging from the ledge or lode he or they may have been following to enter upon that of another claimant at such intersection. But all persons shall in all cases as provided in this act follow the vein, lode or crevice extending most nearly in the general direction of the lode upon which such person or persons originally located his or their claims. Intersections.
Provido.

SEC. 10. Where two ledges or lodes are discovered at any distance apart, and they be known by different names, and it shall subsequently be proven that the *two* are *one* and the same ledge or lode, the person or persons having first located and recorded claims upon such ledge or lode shall be the legal owners and entitled to possession thereof; *Provided*, That the parties evicted shall not be held liable for damages for any ores that may have been reduced or otherwise disposed of previous to the proven unity of such ledge or lode. Unity of lodes.
Provido.

SEC. 11. Any person or persons, desiring to prospect for "blind" or non-cropping ledges by tunneling, may locate claims for that purpose; *Provided*, That the right of way of such tunnel shall not exceed five hundred feet, at right angles to the tunnel. All persons owning in said tunnel Prospecting by tunneling.

Proviso. shall have the right to claim two hundred feet each on any and all ledges or lodes, such tunnel may tap; *Provided*, Such ledges or lodes, have not been already discovered and worked in accordance with section three of this act, previous to the location and working of such tunnel.

Extra claim. SEC. 12. Any person or persons, discovering a ledge or lode by means of a tunnel, as provided for in section two of this act, shall be entitled to an extra or additional claim of two hundred feet for the discovery; *Provided*, That the total

Proviso. number of feet held or claimed by tunnel companies on any lode or ledge, shall not exceed three thousand feet by location for any such company, and all such lodes or ledges shall be held and worked in compliance with section three of this act.

Tunnel intersects a lode already worked. SEC. 13. When a tunnel shall intersect or cross a ledge or lode which is claimed to be a ledge or lode previously discovered and worked on the surface above said tunnel by other persons, then the owners of such tunnel shall have the right to extract for their own use and benefit, the minerals or ores from such disputed ledge or lode, until the person or persons claiming the same on the surface shall descend from the surface through a shaft, following the crevice of such ledge or lode or vein until they intersect the said tunnel with such shaft, which intersection of said tunnel, by said shaft, shall be proof of ownership; and said tunnel shall thenceforth and always remain open and free as a natural drainage for said ledge, lode or mine.

Right of way for tunnel. SEC. 14. Any person or persons shall have the right of way for a tunnel for the development of a ledge or lode already owned and claimed by them on the surface; *Provided*, such person or persons stake a notice, stating the object of such work, at the mouth of such tunnel; and such right of way shall not preclude or interfere with the right of other persons to prospect by tunnel or other process or means at any point not within fifty feet of either side of such tunnel. And the labor expended on such tunnel shall be construed to be labor to the same amount on the claims, for the development of which the tunnel shall be worked.

Proviso.

SEC. 15. Any person or persons claiming any ditch, or

other water site, shall immediately place a substantial stake with notice of claim, stating the objects and purposes of said ditch at that point on the main stream or body of water from which the supply for said ditch is to be drawn, and proceed to survey the line of said proposed ditch to its mouth, where another stake and notice, similar to those at the head of the ditch, shall be placed.

Claims for ditch or water site.

SEC. 16. Notice of such claim for water privilege shall be recorded, and affidavit of such survey filed in the office of the register of deeds for the county or recorder of the district wherein such claim is situated, within fifteen days after the posting of the first notice.

Notice to be recorded.

SEC. 17. Any person or persons claiming any ditch or water privilege shall, within six months after filing notice of such claim, complete the excavation of at least one-tenth of the entire length of said ditch, and within twelve months thereafter the construction of at least one-half of the entire length of the proposed ditch shall be completed, after which it shall be considered real estate.

Time given for completion.

SEC. 18. Any person or persons who may be engaged in conducting water into or through any mining district, or locality, shall have the right of way for that purpose over and across any road, ditch or mine; *Provided*, That such water be so controlled and guarded as not to interfere with the vested rights of others, flood, run into or damage by sipage, any mine or mines of other persons or parties.

Right of way.

Proviso.

SEC. 19. Any person or persons claiming mill sites for quartz mills, shall be entitled to locate for that purpose a tract of land not exceeding five hundred feet square, by posting notices at each corner of such claim, describing the objects and purposes thereof, and shall have the same surveyed, and a plat thereof recorded in the office of the recorder of the mining district or register of deeds of the county or district wherein such claim may be situated; and within six months after date of notice of such claim, the same shall be improved to the value and amount of two hundred dollars.

Mill sites.

SEC. 20. Miners are authorized to form and establish mining districts, not to exceed twenty miles square, the

Mining districts.

boundaries of which shall be fully and clearly described and defined by natural objects, and the miners so forming such districts shall have power to adopt such local laws and rules as may be deemed necessary, each district for itself; *Provided*, They shall enact no local law, rule or order, which may be inconsistent with the laws of the United States and this territory.

Proviso. *Provided*, They shall enact no local law, rule or order, which may be inconsistent with the laws of the United States and this territory.

Mining recorder. SEC. 21. The miners of each district shall have power to elect a mining recorder, whose duty it shall be to keep a true and correct record of the proceedings of all miners' meetings; and it shall be his duty to record all notices of claims filed in his office for record.

Fees of recorder. SEC. 22. The recorder of such mining districts shall receive for recording each notice of claims at least one dollar, to be transmitted with a copy of such notice to the register of deeds of the county wherein such district is situated as may directed by the laws of the district; and the the recorder of such district may receive such other fees as shall be prescribed by the local laws thereof; *Provided*, That abstracts of all district records shall be forwarded to the office of register of deeds every four months.

Proviso.

Local laws. SEC. 23. Each mining district shall, by local laws, establish its own rules for holding and working placer mines;

Proviso. *Provided*, All records of claims, whether of quartz or placer mines in district records, shall be legal and valid according to priority in filing notice for record.

Sales and transfers. SEC. 24. All sales, transfers and conveyance of quartz mining property, shall be made by deed as in the sale, transfer or conveyance of real estate.

Hindrance by Indians. SEC. 25. Hindrance of work by Indians shall not cause forfeiture of claims, when it is clearly proven that work could not have been prosecuted with safety to life or person.

Re-location. SEC. 26. Any and all claims held in compliance with this act, shall not be subject to re-location, and all claims or fractions thereof not so held, may be re-located by any person or persons who shall file for record with the register of deeds or mining recorder, a notice of such re-location of

such lode or ledge, or water right or privilege, setting forth distinctly why such re-location is made.

SEC. 27. Any person or persons who may directly or indirectly be engaged, interested or implicated in maliciously destroying, removing, defacing, obliterating or otherwise altering the character or position, or changing the terms, significance, or original effect and intention of any notice of claim of any placer or quartz mine, or water or ditch privilege, or other claim of similar character, in any mining district or locality, unless such claim be subject, under the law, to re-location, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment for not less than *one* nor more than *three* months, or by a fine not less than one hundred nor more than three hundred dollars, or by both such fine and imprisonment.

Destroying or altering notice.

SEC. 28. Any person who shall date any notice of claim herein provided for, prior to the time of the actual putting up of such notice, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding one hundred dollars, or imprisonment in the county jail any time not exceeding six months, or both fined and imprisoned.

Dating notice prior to time of putting up.

SEC. 29. This act shall take effect and be in force from and after its passage.

Approved, December 2, 1869.

TERRITORIAL TREASURY.

CHAPTER 23.

AN ACT TO ORGANIZE AND ESTABLISH THE TERRITORIAL TREASURY
DEPARTMENT.

*Be it enacted by the Council and House of Representatives of
the Territory of Wyoming:*

TITLE I.

SEC. 1. The governor shall nominate, and by and with the consent of the council, appoint during the present session

Governor to appoint and commission auditor and treasurer.

of the legislative assembly, a territorial treasurer and territorial auditor of public accounts, who shall hold their offices two years, and until their successors are duly appointed and qualified, who shall keep their respective offices at the seat of government. They shall be commissioned by the governor, and take the oath of office prescribed by law, which shall be indorsed on their several commissions.

Bonds.

SEC. 2. The treasurer shall give bonds to the territory of Wyoming in the penal sum of not less than ten thousand dollars, conditioned that he will truly account for all moneys coming into his hands by virtue of his office, and the auditor shall give like bonds in the penal sum of five thousand dollars, conditioned for the faithful discharge of the duty of his office, which several bonds, with the oath of office, shall be deposited in the office of the secretary of the territory.

**Sureties to state
amount of prop-
erty.**

SEC. 3. Each surety, when he shall sign such bond, shall write down in words opposite his name the amount he is willing to swear he is worth, and shall make such oath before a justice of the peace in writing to be laid before the governor, that he believes himself to be worth the sum written opposite his name, over and above all his debts, liabilities and exemptions.

**Security to ap-
prove.**

SEC. 4. The secretary of the territory shall indorse on the bond his approval thereof, stating the time of approval, and file the same in his office.

Bonds.

SEC. 5. No auditor or treasurer shall enter upon the duties of his office until he shall have given bonds as specified in the foregoing sections.

Seals.

SEC. 6. The treasurer and auditor shall each keep a seal of office, which shall be used to authenticate all writings, papers and documents certified from either of such officers respectively.

**Books, maps,
&c.**

SEC. 7. All books, maps, stationery, furniture, office rent and fuel, necessary for the use of the offices of auditor and treasurer, shall be furnished at the expense of the territory.

TITLE II.

Of the Auditor and his Duties.

SEC. 1. The auditor of public accounts shall be the

general accountant of the territory, and the keeper of all public account books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the territory, and its revenue, debt, and fiscal affairs not required by law to be kept in some other office, or kept by some other person.

Auditor to keep account..

SEC. 2. He shall prepare and report to the legislative assembly, at the commencement of each session ;

What he shall report to assembly.

First, A detailed and full statement of the condition of the revenue and the amount of the expenditures for the two preceding years.

Second, A full and detailed statement of the public debt.

Third, Estimates of the revenue and expenditures for the two succeeding fiscal years.

Fourth, Such plans as he may deem expedient for the support of the public credit, for lessening the public expenses, for promoting economy in the public offices, and generally for the better management and more perfect understanding of the fiscal affairs of the territory.

Fifth, A tabular statement, showing separately the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended.

Sixth, A tabular statement showing the amount of revenue chargeable to each county, for the two preceding years, the aggregate amount of each object of taxation, together with the tax due on the same.

SEC. 3. He shall,—

Further title of auditor.

First, Audit and settle all claims against the territory, payable out of the treasury, except only such claims as may expressly required by law to be audited and settled by other officers and persons.

Second, Draw all warrants upon the treasurer for money, except only in cases otherwise expressly provided for by law.

Third, Express in the body of any warrant which he may draw upon the treasury for money the particular fund appropriated by law out of which the same is to be paid.

Fourth, Audit, settle and adjust the accounts of the collectors of the revenue, and other holders of public money, who are required by law to pay the same into the treasury.

Fifth, Keep an account between the territory and the territorial treasury.

Sixth, Keep an account of all debts and credits between the territory and the United States, and between the territory and every other state, sovereignty, community, officer or person with whom the territory may have dealings, and of any separate fund in the territory authorized by law.

Seventh, Direct prosecution in the name of the territory for all official delinquencies in relation to the assessment, collection and payment of the revenue against all persons who may by any means become possessed of public money or property and fail to pay over or deliver the same, and against all debtors of the territory.

Eighth, Give information in writing to either house of the legislative assembly whenever required upon any subject relating to the fiscal affairs of the territory, or touching any duty of his office.

Ninth, Perform all such other duties as may be required of him by law.

TITLE III.

Of the Treasurer and his Duties.

Duties of treasurer.

SEC. 1. The treasurer shall,—

First, Receive and keep all moneys of the territory, not expressly required by law to be received and kept by some other person.

Second, Disburse the public money upon warrants drawn upon the treasury according to law, and not otherwise.

Third, Keep a just, true and comprehensive account of all money received and disbursed.

Fourth, Keep a just and true account of each head of appropriation made by law, and the disbursements made under the same.

Fifth, Render his accounts to the auditor for settlement quarterly, or oftener if required.

Sixth, Report to each house of the legislative assembly

within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury, and its operations for the two preceding years.

Seventh, Give information in writing to either house of the legislative assembly whenever required, upon any subject connected with the treasury, or touching any duties of his office.

Eighth, Perform all such other duties as may be required of him by law.

SEC. 2. The treasurer shall grant duplicate receipts, under the seal of his office, for all sums of money which shall be paid into the treasury, and the person receiving the same shall deposit one of them with the auditor, who shall credit such person accordingly, and charge the treasurer with the amount.

Receipts.

TITLE IV.

Of the Settlements of Claims and Accounts.

SEC. 1. All collectors of the revenue, and others bound by law to pay money directly into the treasury, shall exhibit their accounts and vouchers to the auditor, on or before the first Monday in November, in each year, to be audited, adjusted and settled, and the auditor shall proceed without unnecessary delay to audit, adjust and settle the same, and report to the treasurer the balance found due.

Accounts and
vouchers, when
exhibited.

SEC. 2. If any of the persons mentioned in the preceding section shall fail to pay the amount so found due into the treasury, and produce the treasurer's receipt to the auditor within ten days after the settlement required, the delinquent shall forfeit to the territory the amount of the commission allowed him by law, and also two per centum per month on the amount wrongfully withheld, to be computed from the time the same ought to have been paid, until actual payment, and the auditor shall charge such delinquent accordingly.

To be paid with-
in ten days.

Forfeiture.

SEC. 3. Immediately after such delinquency shall occur, the auditor shall issue a warrant of distress against such delinquent and his sureties, directed to the sheriff of the

Warrant of dis-
tress.

Who to serve.

proper county, or if there be no sheriff, or if he shall be disqualified to act, then to the sheriff of some adjoining county (who is authorized and required to execute the same, and who, together with his sureties shall be liable on his official bond in the same manner and to the same extent as if the writ were to be executed in his own county,) stating therein the amount due, and the penalties and forfeitures.

Sheriff to collect by distress and sale.

SEC. 4. Such sheriff shall levy and collect the amount named in such warrant, together with the penalties and forfeitures stated in the writ, by the distress and sale of goods, chattels and real estate of the delinquent, and for the want of sufficient goods and chattels and real estate of the delinquent to satisfy such warrant, then by the distress and the sale of the goods and chattels and real estate of the sureties of such delinquent.

Advertisement and sale.

SEC. 5. Property distrained shall be advertised and sold in such manner and at such time and place as is prescribed by law for advertising and selling property by virtue of a writ of *fiery facias*, and the sum collected shall be accounted for and paid into the treasury within sixty days after its collection, unless the first Monday in November shall intervene, and in that event, then on or before that day.

Mileage.

SEC. 6. The officer collecting money by virtue of a distress warrant, shall receive the same mileage for paying it into the treasury, as is allowed by law to county treasurers for the same service, but if such officer shall be the collector of the revenue, he shall not receive such mileage, if such money be paid at the time of paying the revenue.

Claims to be exhibited within one year.

SEC. 7. Persons having claims against the territory shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled and allowed, within one year after such claims shall accrue, and not afterwards.

What claims allowed.

SEC. 8. In all suits brought in behalf of the territory, no debt or claim shall be allowed against the territory, as a set-off, but such as have been exhibited to the auditor, and by him allowed or disallowed, except only in cases when it shall be proved to the satisfaction of the court that the defendant at the time of trial is in possession of vouchers

which he could not produce to the auditor, or that he was prevented from exhibiting the claim to the auditor by absence from the territory, sickness, or unavoidable accidents.

SEC. 9. The auditor, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses or others on oath or affirmation, touching any matters material to be known in the settlement of such accounts, and for that purpose may issue subpoenas, and compel witnesses to attend before him, and give evidence in the same manner and by the same means allowed by law to courts of record.

Auditor may examine parties, &c.

SEC. 10. All accounts, vouchers, and documents settled or to be settled by the auditor shall be preserved in his office, and copies thereof authenticated by the official seal shall be given to any person interested therein who may require the same.

Accounts preserved.

SEC. 11. In all cases of accounts audited and allowed against the territory, and in all cases of grants, salaries, pay and expenses allowed by law, the auditor shall draw a warrant on the treasurer for the amount due, in the form set forth by the revenue department.

Auditor to draw a warrant.

SEC. 12. No warrant shall be drawn by the auditor, or paid by the treasurer unless the money has been previously appropriated by law, nor shall the whole amount drawn for or paid under one head ever exceed the amount appropriated by law for that purpose.

Money to be appropriated

SEC. 13. If any person interested shall be dissatisfied with the decision of the auditor on any claim, account or credit, the auditor shall, at the request of such person, certify his decision, with his reasons therefor, specifying the items rejected, if less than the whole, under the seal of his office, and refer the same to the legislative assembly.

Auditor to certify reasons for rejection.

SEC. 14. In all cases where the law recognizes a claim for money against the territory, and no appropriation shall be made by law to pay the same, the auditor shall audit and adjust the same, and give the claimant a certificate of the amount thereof under official seal, if demanded, and shall

No appropriation.

report the same to the legislative assembly, with as little delay as possible.

Delinquent collectors reported.

SEC. 15. The auditor shall report to the legislative assembly, within ten days after the commencement of each regular session, a list of all collectors of the revenue and other holders of public money whose accounts have remained unsettled for the space of six months after they ought to have been settled according to law, and the reasons therefor.

List of defaulters published.

SEC. 16. When the collectors of the revenue or other holders of the public money, shall fail to pay the amount due by them into the treasury within the time prescribed by law, the auditor shall, within thirty days after such default, publish for one week in two newspapers printed at two of the most public places in the territory, a list of all such defaulters, with the amounts respectively due from each.

TITLE V.

Miscellaneous Provisions.

All books free to inspection.

SEC. 1. The auditor and treasurer shall have free access to each other's offices for the inspection of all books, accounts and papers which they respectively contain, and free access to all the other offices of the territory, for the inspection of such books, accounts and papers as concern any of their duties.

Letter books.

SEC. 2. The auditor and treasurer shall each keep a letter book in which shall be recorded all official letters they may write.

Warrant not authorized.

SEC. 3. If the auditor shall knowingly issue any warrant upon the treasury, not authorized by law, he shall, upon conviction thereof, be fined in a sum not exceeding four-fold the amount of such warrant and imprisonment for any length of time, not exceeding one year, and shall be deemed guilty of a misdemeanor in office.

Refusal to pay lawful warrant.

SEC. 4. If the treasurer shall wilfully and unlawfully refuse to pay any warrant lawfully drawn upon the treasury, he shall forfeit and pay to the holder thereof four-fold the amount of such warrant, to be recovered by action of debt against the treasurer and his sureties on his official bond or

otherwise, according to law, and the treasurer shall be deemed guilty of a misdemeanor in office.

SEC. 5. If the auditor or treasurer shall wilfully neglect or refuse to perform any duty enjoined by law, or shall be guilty of any oppression or extortion in the performance of any legal duty, or shall receive any fee or reward for the performance of any legal duty not allowed by law, or by color of his office, shall knowingly do any act not authorized by law, or in any other manner than is required by law, he shall forfeit to the territory any sum not exceeding one thousand dollars, and shall be deemed guilty of a misdemeanor in office.

Neglect of duty
and unlawful
acts.

SEC. 6. The amount of every account audited, adjusted and found due in the territory according to this act, with the penalties and interest thereon, is declared to be a lien upon the real estate of the person charged with the same from the time that suit shall be commenced for the recovery thereof.

Amount due
the territory a
lien.

SEC. 7. Previous to each regular session of the legislative assembly, the secretary of the territory shall select and notify by giving ten days notice, one member elected to the council and two members elected to the house of representatives, to attend at the seat of government six days before the commencement of the session, for the purpose of settling with the auditor and treasurer.

Who to settle
with auditor and
treasurer.

SEC. 8. The members thus elected, before entering on such duties, shall take the oath required by the constitution, of members of the legislative assembly, which shall be indorsed and certified on their certificates of election.

Oath taken and
indorsed.

SEC. 9. The members selected, or a majority of them, shall make such settlement and make to each house of the legislative assembly a report thereof, and if they approve the same, shall cause proper entries to be made in the books of the auditor's and treasurer's offices, showing the result of such settlement, and immediately thereupon, shall cause all vouchers which shall have been examined and allowed, in such settlement to be defaced, by writing in large letters on the face thereof, the word "cancelled."

Report to as-
sembly.

Auditor or treasurer *pro tempore*.

SEC. 10. In case of the death, sickness, absence from the territory, removal from office, or impeachment of any auditor or treasurer, the governor may make an appointment for the time being, of some suitable person to perform the duties of such office until a successor can be appointed according to law, or until such absence or disability shall cease, and he shall give bonds as required by this act.

Settlement with officers *pro tempore*.

SEC. 11. Immediately after the appointment and qualification of any auditor or treasurer, or the resumption of his duties by either officer, (if in the meantime an auditor or treasurer *pro tempore* shall have been appointed), the legislative assembly, if in session, or if not, the secretary of the territory, shall cause a settlement to be made of the accounts of the former auditor or treasurer, *pro tempore*, remaining unsettled in the manner provided in the seventh, eighth, and ninth sections of this title.

Certificate.

SEC. 12. If the legislative assembly shall be in session when such settlement is made, it shall cause to be made out and delivered to the person entitled thereto, a certificate of such settlement, showing the balance of money, securities and effects for which he is accountable, and what has been delivered to his successor.

Assembly not in session.

SEC. 13. If the legislative assembly shall not be in session when such settlement is made, the persons appointed by the governor to make such settlement, shall make out duplicate certificates of such settlements, showing what is required to be shown in the certificate, to be made out according to the provisions of the preceding section, one of which shall be delivered to the person entitled thereto, and the other to the governor, to be laid before the legislative assembly at its next session.

Duplicate certificates.

Settlement approved.

SEC. 14. When the certificate mentioned in the next preceding section shall be laid before the legislative assembly, if it approve the same, it shall cause the proper entries to be made in the books of the auditor and treasurer, and if it disapprove thereof, it shall cause another settlement to be made.

Disapproved.

SEC. 15. Any person appointed by the governor of the

territory in virtue of the tenth section of this act, shall have the same compensation allowed by law to the officer whose duty he is appointed to perform, in proportion to the time he shall be engaged in such service. Compensation of officers pro tem.

SEC. 16. The persons appointed by the governor to make such settlement with the auditor and treasurer, shall receive the same compensation as is allowed by law to members of the legislative assembly, during the time they may be engaged in such service. Pay of persons appointed to settle.

SEC. 17. The auditor and treasurer shall each have power to administer all oaths and affirmations required by law in matters touching the duties of their respective offices. Oaths.

TITLE VI.

Of Sureties.

SEC. 1. Each surety offered on the bond of the treasurer of the territory, shall make oath either before the secretary of the territory, or some justice of the peace in writing to be laid before the secretary of the territory, that he believes himself to be worth the amount set opposite his name, over and above all his debts, liabilities and exemptions. Surety to make oath.

SEC. 2. The auditor of this territory shall receive a salary of one thousand dollars per annum, which shall be paid quarterly out of the territorial treasury, and the treasurer of this territory shall receive as compensation for his services a salary of four hundred dollars and two per cent. upon all money paid into the territorial treasury, as revenue, or arising from any sources of taxation, fines or forfeitures. Compensation.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved, Dec. 2nd, 1869.

TIMBER AND SAW-LOGS.

CHAPTER 24.

AN ACT FOR THE PROTECTION OF THE OWNERS OF TIMBER AND SAW-LOGS
IN THIS TERRITORY.

*Be it enacted by the Council and House of Representatives
of the Territory of Wyoming:*

Punishment for
taking or injur-
ing saw logs.

SEC. 1. Any person or persons who shall wilfully and without authority, take any saw-logs that may be on any river or creek, on the land adjoining or near a river which may have floated down said river or creek, or on to said land, or shall remove or attempt to remove the said logs, or who shall cut or split said logs, or otherwise destroy or injure them, shall be held guilty of a misdemeanor, and upon conviction of any of the said offenses, shall be punished by imprisonment in the county jail of the proper county not more than one year nor less than three months, and shall pay a fine of not more than one hundred nor less than ten dollars; *Provided*, That any person may remove any logs which may have floated on his own land or government land occupied by himself, to prevent obstructions to the occupant of said land.

Proviso.

Justice to have
jurisdiction,
when,

SEC. 2. Any justice of the peace shall have concurrent jurisdiction in his own county with the district court, of any offenses in the preceding section specified, when the value of the logs taken or removed, shall be alleged not to exceed the sum of one hundred dollars, and in such case, the punishment shall be by fine not less than twenty nor more than eighty dollars, and if any person on conviction for such an offense, shall refuse or neglect, for the space of ten days,

to pay such fine, it shall be lawful for the justice, before whom the conviction was had, to commit such person or persons to the jail of the proper county, for a period not less than three months, nor more than one year.

SEC. 3. It shall be lawful for any officer in whose hands a writ shall have been placed for the apprehension of any person or persons, charged with taking or removing any saw-logs, to arrest such person or persons, on any part of a river, creek or lake, on any island, in a river or lake contiguous to his proper county, and to secure the logs so taken or removed, so that the owner thereof may be put in possession of the same.

Persons may be arrested, where.

SEC. 4. Any person or persons who shall purchase, receive or secrete saw-logs so taken or removed, or who shall cut or otherwise injure logs so taken or removed, shall be punished in the same manner, and to the same extent as hereinbefore provided in this act for taking, removing, or destroying saw-logs.

Punishment for receiving or secreting logs.

SEC. 5. It shall be deemed necessary for the owners of saw-logs to brand the same with a good and sufficient brand, said brand to be recorded in the office of the county clerk or register of deeds for the county or counties where such creek, river or lake is situated.

Brands.

SEC. 6. Each county clerk or register of deeds shall be entitled to receive the following fees for his services under the provisions of this act, to wit: for recording any brand, fifty cents; for giving certificate of the same, fifty cents.

Fees.

SEC. 7. Whoever shall unlawfully cut out, alter or destroy any brand of the owner, made on any logs, timber or lumber, put into any river, creek or lake, he shall, on conviction, be fined in a sum not less than ten dollars nor more than fifty dollars, and shall be liable to the party injured in three times the amount of damages.

Cutting out brands.

SEC. 8. In any suit under the provisions of the preceding section, if such logs, timber or lumber shall be found in the possession of the defendant, with the marks cut out, altered or destroyed, it shall be considered presumptive evidence of

Presumptive evidence.

his guilt, and the burthen of proof shall be upon him to discharge himself.

SEC. 9. This act shall take effect and be in force from and after its passage.

Approved 9th December, 1869.

NOTARIES PUBLIC.

CHAPTER 25.

AN ACT RESPECTING NOTARIES PUBLIC.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming :

Governor to
appoint notaries.

SEC. 1. The governor shall appoint and commission in each county, as occasion may require, one or more notaries public, not exceeding four, who shall hold their offices for two years, unless sooner removed according to law.

Commissions
attested by sec-
retary and recor-
ded by register of
deeds.

SEC. 2. When any person is appointed or commissioned a notary public by the governor, as provided in the preceding section, his commission shall be attested by the secretary of the territory, under the seal thereof, which commission shall be transmitted by the secretary to the register of deeds of the county in which said appointee resides, who shall record the same in a book to be by him kept in his office, for the purpose of recording therein all commissions issued by the governor to officers in his county.

Bond and oath.

SEC. 3. Each person so appointed to the office of notary public shall, within thirty days from the date of his commission, file with the register of deeds in whose office his commission is filed for record, a bond executed by himself and two sureties, to be approved by said register of deeds, which bond shall run to the territory of Wyoming in the sum of five hundred dollars, conditioned for the faithful performance of the duties of his office, and shall take and subscribe an oath or affirmation before the register of deeds

that he will support the constitution of the United States and the organic law of this territory, and that he will faithfully and impartially discharge and perform all the duties of his office, and the register of deeds shall preserve the bond in his office, and record the commission and oath in a book to be by him kept for that purpose, and shall send to the secretary of the territory a written notice that the requirements of the law are complied with, which notice the secretary shall preserve in his office.

SEC. 4. Each notary public, before entering upon the duties of his office, shall provide himself with an official seal, with which he shall authenticate all his official acts, upon which seal shall be engraven his name, the words "notary public," and the name of the county wherein he resides, and the word "Wyoming;" and shall also provide himself with an official register, wherein he shall record all his official acts required by law to be recorded, and the seal and register of a notary public shall not be levied on or sold. Seal and register.

SEC. 5. Every notary public, so appointed, commissioned and qualified, is hereby authorized and empowered, within the county wherein he resides, and for which he was appointed and commissioned, to administer oaths and affirmations, to take depositions, to receive acknowledgment of deeds, mortgages and powers of attorney and other instruments in writing, to demand acceptance or payment of foreign and inland bills of exchange, promissory notes and obligations in writing, and to protest the same for non-acceptance or non-payment, as the case may require; and to exercise such other powers and duties as by the law of nations and according to commercial usage may be exercised and performed by notaries public. Powers of notaries.

SEC. 6. In all the courts within this territory, the certificate of a notary public over his hand and official seal, shall be received as presumptive evidence of the facts contained in such certificate: *Provided*, That any person interested as a party to a suit may contradict, by other evidence, the certificate of a notary public. Certificate of notary, evidence. Provide.

SEC. 7. Each notary public shall record in his official

Register, what
to contain.

register, in a comprehensive manner, a copy of every bill of exchange, promissory note or obligation received by him for demand and protest, his official act and the date thereof, stating specifically the name of each drawer or indorser or other person notified, and the place where notice was delivered or to which notice was sent.

Negligence or
misconduct.

SEC. 8. If any person shall be damaged or injured by the unlawful act, negligence or misconduct of any notary public, the person damaged or injured may maintain a civil action, on the bond of such notary public, against such notary public and his sureties; and a recovery in such action shall not be a bar to any future action for other cause, to the full amount of the bond.

Register de-
posited with reg-
ister of deeds.

SEC. 9. Each person who has held the office of notary public shall, within thirty days after the expiration of his term of office, or his removal from office, or his removal from the county, deposit his official register with the register of deeds for the county, who shall preserve the same; and in case of death of a person holding the office of notary public, his executor or administrator shall, within thirty days after his decease, deposit his official register with the register of deeds, and any person who shall neglect or fail to fulfil and perform the duty prescribed in this section shall be liable in the penal sum of two hundred dollars, to be applied to the school fund of the county, which sum may be recovered by any citizen of the county suing therefor.

Failure.

SEC. 10. If any register of deeds shall neglect or fail to fulfil and perform the duties imposed on him by this title, such person shall be liable in the penal sum of two hundred dollars, to be recovered and applied as provided in section nine.

Initials on seal
not to invalidate
record.

SEC. 11. No deed, mortgage, power of attorney, or other instrument in writing heretofore executed and acknowledged before a notary public, and no certificate of an official act of any notary public within this territory shall be held invalid or defective because the official seal of the notary certifying thereto, contained the initial or abbreviation of any name or word, or different words from

those required to be contained or engraven on the seal of the notary public.

SEC. 14. The secretary shall be entitled, for receiving Fee of secretary and of register. and forwarding the commission of a notary public, the sum of five dollars, and the register of deeds, for giving notice and recording the commission and oath, the sum of one dollar, to be paid by the person appointed.

SEC. 15. When the holder of any instrument desires it to be protested and no notary public can be found, it shall When justice or judge may protest. be lawful for any judge of probate or justice of the peace of the county wherein said instrument is required to be protested, to perform the services herein required to be performed by notaries public, and to be entitled to the same fees as are hereinafter provided for notaries public for similar services.

SEC. 16. Notaries public shall be entitled to the Fees. following fees, viz: Protesting note, one dollar; each notice served, fifty cents; taking acknowledgment, seventy five cents; for each mile traveled over the first mile he shall receive twenty-five cents. For all other duties required to be performed by them, the same fees as are allowed by law to clerk's of district court for similar services.

Approved 10th December, 1869.

RETENTION OF MONEY.

CHAPTER 26.

AN ACT PROVIDING FOR THE RETENTION IN THIS TERRITORY, OF CERTAIN MONEY COLLECTED THEREIN, UNDER THE LAWS OF DAKOTA.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

SEC. 1. That all money which has been, or may be hereafter collected in this territory, during the current year, What money to be retained. by the different collecting officers of the several counties, as a territorial tax for the territory of Dakota, shall be paid into the territorial treasury of Wyoming, by the several persons

or officers having charge of such money or funds, who, but for this act, would be required to pay the same into the territorial treasury of Dakota.

This act to be
a defense.

SEC. 2. This act shall be a full and complete defense to all such officers in any court in this territory, in which said officers, or any of them, shall be prosecuted for the non-payment of such money into the treasury of said Dakota territory.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved, December 9, 1869.

ROADS AND HIGHWAYS.

CHAPTER 26.

AN ACT CONCERNING ROADS AND HIGHWAYS.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

What roads
public highways

SEC. 1. All roads within this territory shall be considered public highways, which have been, or may hereafter be declared territorial roads by act of the legislative assembly, or which have been or may be declared public roads by the board of county commissioners of any county, within such county, or which have been, or shall hereafter be used and traveled by the public, so that the same would, according to the course of the common law, be deemed public highways.

Petition for
changing road.

SEC. 2. Any person or persons desiring to have any territorial road changed, shall petition the board of county commissioners, which petition shall state the change asked to be made, and said petition shall be signed by at least two-thirds of all the house-holders residing within one mile of that portion of the road which it is desired to change.

Noticed.

SEC. 3. It shall be the duty of the commissioners of any county in this territory, through which any territorial

road is, or may be located, in ten days after receiving any petitions as required in the preceding section, to post notices in three conspicuous places along the line of said road; said notices shall state the time and place, when and where they will meet, and such notices shall be posted at least ten days before said meeting.

SEC. 4. It shall be the duty of the county commissioners, or of a majority of them, to meet at the time and place specified in said notices, and proceed to view said road according to the prayer of said petitioners, and to hear such allegations as may be made for or against the change prayed for; and thereupon the board of commissioners may, in their discretion, by an order to be entered of record, particularly describing the changes made therein, re-locate such territorial road within their county, and such road or part thereof, upon payment of all damages occasioned by the opening of the same, as hereinafter mentioned, shall be, and stand in lieu of so much of such road as said commissioners shall declare vacated; *Provided*, That the line and direction of such road, shall in no county be changed further than necessary to straighten or locate the same upon better ground, or by a shorter or nearer route; nor shall the line of any such road of any county, be so changed that the same may not connect directly with the continuation of such road in any adjoining county or counties.

County commissioners to view road.

Provided.

SEC. 5. Whenever a petition, signed by not less than fifteen house-holders of such county, shall be presented to the board of commissioners of any county praying for a public road to be laid out within such county, designating the termini and general course of such road, the petitioners shall deposit with the county clerk a sum sufficient to defray the expense of viewing the proposed road, to be fixed by the board of county commissioners, such board shall appoint a day for the hearing of such petition, and shall forthwith direct that some one of the petitioners, at his own expense, serve a written notice upon every person residing upon any of the lands across which it is proposed to lay out said road, setting out the substance of such petition, and the time

Petitioners to bear expense of viewing.

Persons on line of road to be served with notice.

Duties of com-
missioners.

appointed for hearing the same, and that the clerk post the like notice upon the door of his office not less than ten days before the hearing of such petition. Upon the day set for the hearing of such petition, if it appear that such notices have been given, as above required, the commissioners shall proceed to hear the allegations and objections of the petitioners, and of all persons objecting, and if it shall appear to them that such road is necessary, or that it is expedient to locate the same, they shall proceed to appoint three disinterested house-holders of the county as viewers, to view and locate such road, and to make, or cause to be made a survey and plat thereof, to determine the probable expense of opening the same, so that such road may be traveled, and to assess and equalize the damages and benefits which may accrue to any and all owners of lands over which such road is to be located. The county commissioners shall also at the time of the appointment of such road viewers, fix and publicly announce a day and place for the meeting of such viewers, not less than ten days subsequent to the day of such appointment.

Warrant of
county clerk to
be served by
sheriff or deputy.

SEC. 6. Immediately after such appointment, the county clerk shall issue a warrant directed to the viewers appointed, setting forth their appointment, and requiring them to meet on the day and at the place named by the board of county commissioners, and to proceed thence to view and locate such road, and survey or cause the same to be surveyed and platted, and return the said plat with their assessment of the damages and benefits, in each case accruing or resulting to the owners of any lands over which said road may pass, by reason of the location thereof, and the probable cost of opening such road to travel, into the office of the county clerk on the first day of the next regular meeting of the board of county commissioners. Such warrant shall be delivered to the sheriff, or to any of his deputies to be served, and the sheriff or his deputy as the case may be, shall serve the same by delivering a copy thereof to each of the persons named or indicated therein as viewers of such contemplated road; the original of such warrant shall be returned to the

county clerk with the endorsement of service thereon. Any person appointed a road viewer as provided in this act, who shall wilfully neglect or refuse to act, shall forfeit the sum of fifty dollars to the county, to be recovered by action of debt in the name of the county before any justice of the peace.

SEC. 7. In case any person appointed a road viewer as provided in this act, shall refuse or be disqualified to act, or cannot be found, the board of county commissioners may appoint some other person to act in his stead.

Refusal to act.

SEC. 8. If the viewers appointed fail or omit to make their return on or before the day named in the warrant, for the return thereof, the same shall be deemed to be continued to such day as the county commissioners may designate, or until the next regular meeting of the board, if no day be designated.

Failure to make return.

SEC. 9. The viewers appointed shall designate and mark out such road as located by them, either by stakes or by turning a furrow upon both sides of the proposed road on prairie, meadow lands or plains, and by blazing trees, or by other appropriate and easily discernable land marks, in wooded lands or in mountainous regions.

Road, how designated.

SEC. 10. Upon the return of such plat and assessment, the board of county commissioners shall proceed to consider the same, and all objections which may be made thereto, and they shall determine whether such road shall be opened and located or not; and if in their judgment it may appear beneficial or necessary, they may refer the matter of such viewing and assessment to the same or other viewers, with directions to report in like manner.

Commissioners to decide whether or not located.

SEC. 11. Whenever in any case, the damages accruing to any person by reason of the opening of such road, shall exceed the benefits to him, according to the report of the viewers, the excess shall be paid by the county, and the commissioners shall issue scrip therefor.

Damages.

SEC. 12. Upon the payment of all such damages or the excess thereof, over the benefits, to the owners of any lands taken for the opening of any such road, such road shall,

Road or highway, when damages are paid.

upon the order of the county commissioners to that effect, be and become a public highway.

Where unlawful to locate.

SEC. 13. In locating or laying out any road under the provisions of this act, it shall not be lawful to locate the same through any dwelling house nor within thirty rods thereof, nor through any barn, stable, office, mill or other building, nor through any garden, orchard or stable-yard, appurtenant to any dwelling house, without consent of the owner of such premises.

Width of roads.

SEC. 14. All territorial and other public highways hereafter located and laid out under direction of the legislative assembly or county commissioners of any county shall not be less than sixty nor more than eighty feet in width.

Fords.

SEC. 15. When any public road heretofore laid out, or traveled as such, or hereafter to be laid out or traveled as a public road, crosses any stream of water, and such stream is at any time during the year, fordable where such road crosses, or shall cross the same, the said ford and the banks of the stream adjacent thereto, and the roadway or track usually traveled leading to and from such highway to and from such ford, shall be deemed and taken to be a part, portion and continuation of such public road and highway. Any person who shall obstruct any such ford, or the road leading thereto, or shall dig down the banks of such ford, or who shall erect any dam, embankment or other obstruction in such stream, or any wing dam, or other obstruction, upon the banks or edge of such stream, for the purpose of raising the water of such stream upon said ford, so as to render the said ford impassable or more difficult of passage than heretofore, or who shall maintain any such dam, wingdam, embankment or obstruction heretofore erected, after being required by the road overseer or other authorized person, of the district wherein the same is situated, to remove or abate the same, shall be liable to the same penalties as for obstructing a public highway.

Obstructions.

No toll bridge.

SEC. 16. No person or persons, company or corporation, shall, upon any pretense or authority, be permitted to erect

a toll bridge over any stream at or upon any public ford or road crossing, or so near thereto as, by the abutments, embankments, piers of such bridge, to obstruct or render impassable the said ford or the roadway leading thereto.

SEC. 17. When any bridge is to be built upon any public highway, the estimated cost of which shall exceed fifty dollars, the work shall be given out, and such bridge constructed by contract; and the county commissioners shall cause notices of such contract to be let to be published for three consecutive weeks, in any newspaper published within the county, or if no newspaper be published in the county they shall cause written or printed notices of such contract to be let, to be posted in two of the most public places in such county, and one such notice on the door of the court house, or of the building used as court house in such county, thirty days before the letting of such contract, and all such contracts shall be awarded by the county commissioners to the lowest responsible bidder; and the commissioners are hereby authorized to contract for other necessary improvements upon the public roads and highways in the same manner as provided in the case of bridges; *Provided*, That when any bridge is to be built or other improvement made, as provided in this section, the county commissioners may award such contract in such manner as to them shall appear just and equitable for the county.

Bridge when
built by contract.

Notices.

Provide.

SEC. 18. If any person shall wilfully erect, or place or cause to be erected or placed, within or upon any highway or public road, any obstruction, or shall wilfully obstruct or encroach upon any public highway, by felling trees or placing stones therein, or by erecting any fence, house or other structure therein, or if any person shall tear down, burn or destroy, or in any way maliciously or wilfully injure any bridge upon any public highway, every person so offending shall pay a fine of not less than one hundred dollars nor more than three hundred dollars for such obstruction, and a fine of twenty dollars for each day that such obstruction shall be suffered to remain in such road after notice shall have been given for the removal thereof; and for wilful or

Obstructions,

Penalties.

malicious injury to any bridge as provided in this section, the penalty shall be four fold the cost, or estimated cost of repairing such damage, or imprisonment therefor at the rate of one day's confinement for each two dollars of such damage.

Nor person to
damage by water

SEC. 19. No person or persons, company or corporation, shall, by virtue of any franchise, charter or law granted, or made for any mining ditch, milling, irrigating or other purpose whatsoever, be permitted or allowed to dam the water of any stream in this territory, so that the water or waters raised by such damming shall flow back to a higher point or mark on the margin of such stream than high water mark, or so that the water thus dammed shall overflow any public road or highway running or being situated on the side or banks of such stream, or so as to cause the water so dammed to undermine, weaken or damage any bridges, walls or embankments of such road.

Penalties.

SEC. 20. Any person or persons, company or corporation violating the provisions of section nineteen of this act, shall be liable to a fine of not less than ten dollars, nor more than five hundred dollars, and shall also be liable to the party injured for any damages resulting therefrom.

Ditches to be
bridged.

SEC. 21. Whenever the owner or owners of any ditch, race or drain for mining, milling, manufacturing or other purposes, shall fail, neglect or refuse to construct a bridge over such ditch or canal, whenever the same crosses a public highway, within thirty days after this act shall have been promulgated, by means of print in pamphlet or book form, or in any official newspaper, every such person or owner, and every officer and trustee of any company or corporation owning such ditch, shall be liable to a fine of fifty dollars, and a fine of five dollars for every day that such ditch shall remain unbridged after the time specified in this section.

Fine.

Tax.

SEC. 22. The board of county commissioners of each county shall levy such a tax for the purposes of this act as is provided and authorized by the law providing for a territorial and county revenue.

Fines, how re-
coverable.

SEC. 23. All fines, penalties and forfeitures provided by this act, when not otherwise specified, shall be recoverable

by action of debt in the name of the people of Wyoming territory, or by indictment before any court of competent jurisdiction. All such fines, penalties and forfeitures, shall be paid into the county treasury, and shall become a part of the fund for the construction and repair of roads and bridges.

SEC. 24. This act to be in force and take effect from and after the time specified in section twenty-one.

Approved 9th December, 1869.

G A M I N G .

CHAPTER 27.

AN ACT TO RESTRICT GAMING.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

SEC. 1. Each and every person who shall deal, play, ^{Misdemeanor,} carry on, open or cause to be opened, or who shall conduct, ^{who guilty.} either as owner or employe, whether for hire or not except under a license as herein after provided: Any game of faro, monte, roulette, lansquenette, rondo, vingtun, commonly known as twenty-one, keno, props, or any banking game played with cards, dice, or any other device, whether the same be played for money, checks, credits, or any other representatives of value, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not ^{Punishment.} less than three hundred, nor more than one thousand dollars, or by imprisonment not less than three months nor more than one year, or by both such fine and imprisonment.

SEC. 2. Any person may procure a license for carrying ^{License.} on any one of the games mentioned in section one of this act except as hereinafter provided, in any one room or apartment upon payment to the sheriff of the county in which the same is situated, the amount of license money fixed in section four of this act, and upon giving to said sheriff a definite description of the room in which he designs

to carry on said game and filing with the register of deeds of said county a copy of said description.

Licenses prepared by the register of deeds.

SEC. 3. Blank licenses shall be prepared by the register of deeds, which shall be signed, issued and accounted for as is by law provided in respect to other county licenses. Each license delivered by the sheriff under this act to any person, shall contain the name of the licensee, a description of the room in which the licensee desires to carry on the game licensed, and shall by its term authorize the licensee to carry on one of the games mentioned in the *first section* of this act, specifying it by name in the room described therein for the period of three months next succeeding the date of issuance of the license. The said license shall protect the licensee and his employer or employers against any criminal prosecution for dealing or carrying on the game mentioned in the room described during said *three months*, but not for dealing or carrying on any other game than that specified, or the specified game in any other place than the room so described; *Provided*, That the licensee shall be entitled to deal, or play, or carry on two or more games in the same room by paying a license for each game so dealt or carried on.

Provide.

Amount to be paid to sheriff.

SEC. 4. The amount to be paid to the sheriff for such quarterly license shall be *one hundred and fifty* dollars, and all moneys received for licenses under this act shall be paid into the *county treasury*, and applied to the general county fund.

Misdemeanor, what constitutes.

SEC. 5. Every person who shall permit any of the games mentioned in the *first section* of this act to be played, conducted, dealt or carried on in any house, tent, booth, or shed, owned or occupied by him or her, in whole or in part, except by a person who has received a license as herein provided or his employe, and in the room described therein shall be guilty of a misdemeanor, and on conviction thereof shall be punished as provided in *section one* of this act, and in any prosecution for a violation of this section it shall only be necessary to prove the accused to be the owner or occupant of the building, and that the game has been carried on.

SEC. 6. No town, city, or municipal corporation in

this territory, shall hereafter have power to prohibit, suppress or regulate any gaming house or game, licensed as provided in this act. Powers to prohibit, &c.

SEC. 7. No person otherwise competent as a witness, shall be disqualified or excused from testifying as such, either before any jury or court, to any facts concerning offenses mentioned in the foregoing sections of this act, on the ground that his testimony may criminate himself, and such testimony, if given, shall not be used as evidence against such witness. Witnesses, when not excused.

SEC. 8. The following games and no others shall be licensed under or by virtue of the provisions of this act, viz: faro, monte, keno, ronde, lansquenette, roulette, vintgun, commonly known as twenty-one, and props, and that any person or persons, who shall keep, or deal, or permit to be kept or dealt, in any building or place under his or their control, any other banking or other games of chance for money, or other representation of value played with cards, or other devices, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished as provided in section one of this act; *Provided*, That the word "monte" in this act shall not be construed to mean "three card monte." Games to be licensed.

SEC. 9. It shall be unlawful for any person or persons, to deal, or play, any game mentioned in this act unfairly, or with the intention of cheating, or swindling, or in any wise winning in any way more than the fair percentage of the game, and any person or persons or party, who shall so play, or deal, with the intention of cheating, or swindling, shall, on conviction thereof, be guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not less than three hundred dollars, and not more than one thousand dollars, or imprisoned not less than thirty days, and not more [than one year.] Misdemeanor, punishment for.

SEC. 10. This act shall take effect and be in force from and after its passage.

TERRITORIAL AND COUNTY REVENUE.

CHAPTER 28.

AN ACT TO PROVIDE A TERRITORIAL AND COUNTY REVENUE.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming :

Purpose for
which taxes
assessed.

SEC. 1. There shall be levied and assessed, upon the taxable real and personal property within this territory in each year, the following taxes :

First, For territorial revenue, two mills on the dollar, when no rate is directed by the territorial board of equalization in time for the purposes of this act as hereinafter provided ; but in no case shall the tax for territorial purposes exceed three mills on the dollar.

Second, For county revenue, for ordinary county expenses, not more than five mills on the dollar.

Third, For county revenue, for support of the poor and lunatic purposes, not more than two mills on the dollar.

Fourth, For repairing and constructing roads and bridges, under direction of the county commissioners, not more than two mills on the dollar.

Fifth, The county commissioners of each county shall levy a tax sufficient to defray the expenses of the district courts for their respective counties during each year.

Sixth, And, in addition to the above, they shall levy a poll tax of two dollars for county school purposes, and they may also levy a tax for the support of common schools, not to exceed two mills on the dollar ; *Provided,* That

the aggregate tax for territorial and county purposes shall in no case exceed fifteen mills on the dollar per annum.

SEC. 2. The following described property is hereby exempt from taxation :

What exempt.

First, The property of the United States and of this territory, the property of any county, townships, incorporated towns and school districts, when devoted entirely to public use ; public grounds, by whomsoever donated to the public, including all places for the burial of the dead.

Second. Fire engines and all implements used for extinguishing fires, with the grounds used exclusively for the buildings of a fire company or companies.

Third, All grounds and buildings of literary or scientific institutions incorporated under the laws of this territory. Also the grounds and buildings of benevolent, agricultural and religious institutions or societies, devoted solely to the appropriate objects of these institutions, not exceeding three acres in extent, and not leased or otherwise used with a view to pecuniary profit.

Fourth, The books, papers, furniture and apparatus belonging to the above institutions, and used solely for the purposes above contemplated, and the like property of students in any such institutions, used for their education. Moneys and credits belonging exclusively to said institutions, and devoted solely to sustaining them, but not exceeding in amount or income the sum prescribed by their charter.

Fifth, Household and kitchen furniture, beds and bedding ; wearing apparel of every person, wool, flax and tow, intended to be manufactured, and the food provided for each family, not to exceed in all, the value of one hundred dollars.

Sixth, The polls of all persons who have arrived at the age of sixty years.

SEC. 3. All other property, real and personal, within this territory, is subject to taxation in the manner herein directed, and this section is intended to embrace lands and lots in towns, including lands bought from the United States, whether bought on a credit or otherwise ; buildings or

What taxable.

improvements erected upon lands the title to which still remains in the United States, or in any incorporated company. Ferries, franchises and toll-bridges, all of which, for the purposes of this act, shall be considered real property. Horses and neat cattle, mules and asses, sheep, swine, goats, and all dogs, and other animals, money in bank bills, coin or gold dust, whether in possession or on deposit; property, money or labor due from solvent debtors on contract, or on judgment, and whether within this territory or not; mortgages and other like securities, stock or shares in any bank or company, incorporated or otherwise, and whether incorporated by this or any other territory or state, and whether situated in this territory or not; public stocks or loans, household furniture not otherwise exempt, including gold and silver plate, musical instruments, watches and jewelry, pleasure carriages, stages, hacks, omnibusses and other vehicles for transporting passengers, wagons, carts, drays, sleds, and every other description of vehicle or carriage, all real and personal property within this territory, of every kind and description not heretofore enumerated, belonging to or claimed by any incorporated company, whether incorporated in this territory or not. annuities—but not including pensions from the United States, or any state, nor salaries, nor payment expected for services to be rendered, and all other property not above exempted, although not herein specified.

What included
in term credits.

SEC. 4. The term "credits," as used in this act, includes every claim and demand for money, labor or other valuable things; and every annuity or sum of money receivable at stated periods, and all money in property of any kind, and secured by deed, mortgage or otherwise; but pensions from the United States, or any state, and salaries or payments expected for services to be rendered, are not included in the above term.

Who to list.

SEC. 5. Every inhabitant of this territory, of full age and sound mind, shall list or assist the assessor in listing all property subject to taxation in this territory, of which he is the owner, or has the control or management, in the manner

hereinafter directed. The property of a ward is to be listed by the person having the property in charge; if a married woman, by herself or husband; if a beneficiary for whom property is held in trust, by the trustee, and the personal property of a decedent, by the executor; of a body corporate, company, society or partnership, whether incorporated or formed in this territory, or not, by its principal accounting officer, local agent or partner in the county where the property is located; property under mortgage or lease, is to be listed by, and taxed to the mortgagor or lessor, unless it be listed by the mortgagee or lessee; *Provided*, That in all cases where a railroad is located, and is being or has been constructed in or through any county of this territory, either the president, secretary, general superintendent, division superintendent, general or local agent of any kind of the corporation, company or associations of persons owning or using the same within the county shall, on demand made by the county assessor of any county of this territory, in or through which said road is being, or has been, or may hereafter be constructed, be compelled to furnish such assessor with a statement in writing, under oath or affirmation, duly subscribed and sworn to, before some officer authorized by law to administer oaths, setting forth the length of said road in such county, and the value thereof, with a list of the property real and personal pertaining thereto, also the whole length of said road within this territory, and the number of, and value of all locomotives and cars commonly known as "rolling stock," used on said road within this territory, an apportionment of value of such rolling stock shall be listed and assessed to such county, the same to be estimated according to the proportion which the portion in said county bears to the length of said railroad within this territory. The assessor receiving such statement may avail himself of other evidence under oath, and is hereby authorized for such purposes to administer oaths relating to the matter of such assessment; *Provided*, Reasonable notice of the time and place of taking such evidence shall be served upon the person making such statement, or on some officer or agent of any

Provide.

Provide.

kind of the corporation or company or upon the owners of said railroad.

Demand and notice.

SEC. 6. The demand and notice mentioned in the preceding section, and elsewhere in this act, may be made by personal service on any of the officers, agents, or other persons specified in said section, or by depositing in the post office such written demand or notice, properly enclosed in a letter, postage prepaid, and duly directed to such corporation, company or association of persons at the place of the principal office, or at any place of business of such railroad company, or at any place where the owners of such road may be engaged in business, and the word "railroad" and "road" when applied to railroads in this act, shall be held to include, in addition to the track of said railroad, the land owned by the right of way of such railroad, and all improvements, of any kind, of said corporation, company or owners thereon, and all personal property owned and used therewith.

Failure to furnish statement.

SEC. 7. If any corporation, company or persons owning such railroad, or officers or agents thereof, shall neglect or refuse to furnish a statement as heretofore required in this act, after having had either personal or written notice as specified in section five, the county assessor may proceed to make such assessment in the most available manner, and if any person upon whom such demand is made neglects or refuses to furnish such statement as required, he shall be subject to the penalty provided by this act for like cases.

Reasonable time.

SEC. 8. In all cases where service of demand or notice required by this act is made by letter, as heretofore specified, reasonable time shall be deemed to be double the length of time required for the usual transmission of letters by the United States mail from the place where the letter is deposited to the place where it is directed, and five days additional.

Lands obtained by treaty, &c.

SEC. 9. All land or lands that may have been, or that shall hereafter be acquired by any person, company, or corporation, by reason or as a result, or condition of any treaty, grant or subsidy, whereby full and complete title and control to such land or lands, shall have been obtained and

possessed by such person, corporation or company, it shall be subject to taxation as real property under the laws of this territory.

SEC. 10. Commission merchants, and all persons Commission merchants. trading and dealing on commission, and consignees authorized to sell, when the owner of the goods does not reside in the county, are for the purposes of taxation, to be deemed the owners of the property in their possession, and shall list the average monthly amount of capital in trade since the last assessment.

SEC. 11. All personal property is to be listed, assessed Personal property, where listed and taxed in the county where the owner resides during the time appointed for the assessment and collection of taxes each year, but if the owner resides out of the territory, it is to be listed and taxed where it may then be, except as otherwise provided by this act, and if the agent or person having charge of such property neglect or refuse to list it, he shall be subject to the penalties hereinafter prescribed.

SEC. 12. Any person authorized as agent or attorney, Agents, where to list. or required in any way to list property for another, shall list it in the same county in which he would be required to if it were his own, except as otherwise directed by law, but he shall list it separately from his own, naming the person or estate to whom it belongs, but the undivided property of a person deceased, may be listed as belonging to heirs without enumerating them.

SEC. 13. When a person is doing business in more than Business in more than one county. one county, the property, and credits, existing in any one of the counties, shall be listed and taxed in that county, and the credits not existing in, or pertaining especially to the business in any one county, shall be listed and taxed in that where the principal place of business may be. Any individual of a partnership, is liable for the taxes due from the firm.

SEC. 14. The property of corporations or companies, Property of companies. whether incorporated or formed in this territory or not, constructing or owning canals, ditches, flumes, railways, telegraph lines, plank roads, graded roads, turnpike or toll-roads, bridges, ferries, and similar improvements shall be

assessed to the company or corporation, and may be ascertained by the assessor as provided for in this act in the case of railroads, or in the best manner within the power of such assessor.

Insurance companies.

SEC. 15. Insurance companies of every description, transacting business in this territory, either by agents or other officers or persons, whether such company be incorporated or organized in this territory or not, shall be assessed and taxed for territorial and county purposes in the same amount and at the same rate that all other property is taxed, upon the amount of the premiums taken by them during the year previous to the listing, in the county where the agent conducts that business, and the agent shall render the list, and shall be personally liable for the tax, and if he refuses to render the list, or to swear as herein required, the amount may be ascertained and assessed as provided in this act, in the case of railroads and other corporations.

Shares of stock in national banks.

SEC. 16. Shares of stock, in all national banks, held by any person or persons in this territory, shall be assessed at their par value, and the owner or owners thereof, shall be required to pay tax thereon, the same as though they were shares in banks chartered and incorporated by the laws of this territory, or by the laws of any other state or territory, *Provided*, No discrimination shall be made between any national bank, or branch of any national bank, or any other bank doing a bank business in this territory.

Provided.

Listed every year.

SEC. 17. All taxable property is to be listed and valued each year, and real property is to be assessed at its true value in money at private sale, having regard to its quality, locality, natural advantages, the general improvements in the vicinity, and all other elements of its value.

Bank notes, &c., how assessed.

SEC. 18. Bank notes, and the stocks of corporations and companies, shall be assessed at their cash value, credits shall be listed at such sum as the person listing them believes will be received or can be collected, and annuities at the value which the person listing believes them to be worth in money.

Bank note debts to be deducted.

SEC. 19. In making up the amount of money and credits which any person is required to list, he will be

entitled to deduct from the gross amount, the amount of all *bona fide* debts owing by him, but no acknowledgments of indebtedness, not founded on actual consideration, and no such acknowledgments made for the purpose of being so deducted, shall be considered a debt within the intent of this section, and so much only of any liability of any persons as security for another shall be deducted as the person making the list believes he is legally or equitably bound to pay, and so much only as he believes he will be compelled to pay, on account of the inability of the principal debtor, and if there are other sureties able to contribute, then so much only as he, in whose behalf the list is made, will be bound to contribute, but no person will be entitled to a deduction on account of an obligation of any kind given to an insurance company for the premium of insurance, nor on account of an unpaid subscription to any institution or society, nor on account of a subscription to or installment payable on the capital stock of any company or corporation.

SEC. 20. Any person owning or having in his possession or control, within this territory, with authority to sell the same, any personal property purchased either in or out of this territory, with a view of being sold at an advanced price or profit, or which has been consigned to him from any place out of this territory for the purpose of being sold within the same, shall be held to be a merchant, for the purposes of this act; such property shall be listed for taxation, and in estimating the value thereof, the merchant shall take the average value of such property in his possession or control during the year next previous to the time of listing; and if he has not been engaged in that business so long, then he shall take the average during such time as he may have been so engaged; and if he be commencing, he shall take the value of the property at the time of listing.

Who held to be
a merchant.

SEC. 21. Any person who purchases, receives or holds personal property of any description, for the purpose of adding to the value thereof, by any process of manufacturing, refining, purifying, or by the combination of different materials, with a view of making gain or profit by so doing,

Who is a man-
ufacturer.

and by selling the same, shall be held to be a manufacturer for the purposes of this act; and he shall list for taxation, the average value of such property in his hands, estimated as directed in the preceding section, but the value shall be estimated upon the materials only, entering into the combination or manufacture.

Assessment
books, what to
contain.

SEC. 22. On the first Monday in June in each year, the board of county commissioners shall furnish each assessor with suitable books in duplicate, properly ruled and headed, in which to enter the following items:

First, The name of the individual, corporation, company, society, partnership or firm, to whom any property shall be taxable;

Second, His or their lands by township, range, section or part of a section, and where such part is not a legal division or subdivision, some other description sufficient to identify it, and his or their town lots or parts of lots, naming the town in which they are situated, and their proper description by number and block or otherwise, according to the system of numbering in the town.

Third, His or their personal property by the following particulars: amount of capital employed in manufactures; amount of capital employed in merchandise; number and value of horses; number and value of mules and asses; number and value of neat cattle; number and value of sheep and goats; number and value of swine; number and value of carriages and vehicles of every description; amount of money and credits; amount of all personal or other property not herein enumerated; other property not herein enumerated belonging to any corporation or company, whether incorporated in this territory or not; amount of clocks, watches, jewelry, gold and silver plate; number and value of musical instruments; amount of taxable household furniture; amount of farming utensils and mechanics' tools; amount in stock or shares in any corporation or company; amount of all other property not enumerated; the number of polls, and a column for remarks, and shall also provide the

assessor with all necessary books and blanks required to carry out the provisions of this act.

SEC. 23. Each assessor shall enter upon the discharge of the duties of his office, as soon as furnished with the assessment roll by the county commissioners, as herein before provided, and shall, with the assistance of each person required by law to list property for himself or for another, enter in the books furnished him for that purpose, all kinds of property specified in the preceding section, or that may be subject to taxation; entering the names of the persons assessed in alphabetical order, so far as practicable, by allotting to each letter its requisite number of pages in each of said books. He shall also enter in a separate column the number of adult persons, male and female, and the number of children, male and female, under the age of twenty-one years, in his county, and each assessor shall, on or before the first Monday in July in each year, return the assessment book, properly footed up, to the clerk of the board of county commissioners.

Duties of assessor.

SEC. 24. It shall be the duty of the assessor to list each and every person in his county, and to assess all the property real and personal therein, as required in this act. And any person who shall refuse to assist in making out a list of his property, or of any property of which he is required by law to assist in listing, or refuse to make the oath or affirmation required by this act, shall forfeit the sum of two hundred dollars, to be recovered in the name of the county, by an action brought in the district court for such county, by the board of county commissioners. And when any person refuses to make out a list of his property, which by law, he is required to do, the assessor shall assess such person according to the best information he can get as to the amount of such taxable property which such person has.

Refusing to assist assessor.

SEC. 25. The assessor is hereby required to administer the following oath or affirmation to each person assessed:

Oath.

"You do solemnly swear that you have given in a full and correct inventory of all taxable property owned by you, and all property held by you as agent, guardian or otherwise,

which you are required by law to list, to the best of your knowledge and belief, so help you God."

Refusal to
swear.

And in case any one refuses to take said oath, the assessor shall note the fact in the column of remarks opposite to such person's name. And should it afterwards appear that such person has not given in a full list of his property, or that under his control, any property so omitted, shall be entered on the book at double the ordinary assessed value of like property, and shall be taxed accordingly.

Assessor to
take oath.

SEC. 26. Each assessor shall take and subscribe an oath, to be certified by the officer administering it, and attached to the assessment roll, which oath shall be in substance, as follows:

I, A, B, _____ of _____ county, solemnly swear that the value of all property, money and credits, of which a statement has been made and verified by the oath of the person required to list the same, truly returned as set forth in such statement. That in every case where I have been required to ascertain the amount or value of the property of any person, corporation or company, I have diligently and by the best means in my power, endeavored to ascertain the true amount and value, and that, as I verily believe, the full value thereof is set forth in the annexed return; and that in no case have I knowingly omitted to demand of any person of whom I was required to make it, a statement of the amount and value of his property, which he was required by law to list, nor in any way connived at any violation or evasion of any of the requirements of the law, in relation to the assessment of property for taxation.

Compensation.

SEC. 27. That the assessor of each county shall receive for his services twelve dollars per day for the time actually employed, and actual cost of transportation over railroads or stage lines, said claims to be audited by the county commissioners. If any assessor shall fail or neglect to perform any of the duties required of him by this act at the time and in the manner herein specified, he shall be liable to a fine of not less than twenty dollars nor more than five hundred dollars, to be recovered in an action brought in the district court by

the board of county commissioners. The judgment shall be against him and his sureties on his official bond.

SEC. 28. The board of county commissioners of each county, shall constitute a board for the equalization of the assessment of the several persons in the county, substantially in the same manner as is required by the territorial board of equalization, to equalize among the several counties of the territory as near as may be, and they shall hold a special meeting at the office of the county clerk, at the county seat, within five days after return of the assessment roll in each year, and shall have the right to adjourn such meeting from day to day for not more than ten days, and at such meeting they shall add to said assessment any taxable property in the county not included in the assessment as returned by the assessor, and shall assess the value thereof, and shall hear and determine the complaint of all persons feeling aggrieved by the assessment of their property as returned by the assessor, and for the purpose of equalizing the assessment roll may increase, diminish, or otherwise alter and correct any assessment.

Board of equalization, duties of.

SEC. 29. Any person who may feel aggrieved at anything in the assessment of his property, may appear before the board of equalization, either in person or by agent within the time mentioned in the preceding section, and have the same corrected in such manner as to said board shall seem just and equitable, and it shall be the duty of the assessor of each county when assessing, to give each person assessed a printed notice, of the time and place when and where said board of equalization is to meet, as heretofore specified.

Notice of board of equalization

SEC. 30. Immediately after the assessment roll is corrected by the board of equalization, the county clerk is required to make out an abstract thereof containing the whole number of acres of land listed in the county, and the aggregate value of the same, the total valuation of the town lots, the whole number of horses and their total value, the whole number of mules and asses and their total value; the whole number of neat cattle and their total value; the whole number of sheep and their total value; the whole number of

Abstract, what to contain.

swine and their total value; the whole number of goats and their total value; the whole number of musical instruments and their total value; the whole number and value of clocks, watches, jewelry, gold and silver plate; the total amount of capital employed in merchandise; the total amount of capital employed in manufactures; the total amount of taxable household furniture; the total amount of taxable farming utensils, and mechanic's tools; total value of stock and shares in any corporations or companies, total number and value of carriages and vehicles of every description; total amount of all personal or other property, not herein enumerated, belonging to corporations or companies; the gross amount of all other property returned not herein enumerated; the total amount of money and credits and the total amount of premiums of any and all insurance companies; a copy of which abstract, the clerk is directed to transmit forthwith to the auditor of the territory; but the board of county commissioners are authorized to diminish or add to the above list, and to require such different or further matters to be returned as it deems advisable.

Board of equal-
ization for terri-
tory.

SEC. 31. The governor, treasurer and auditor of the territory, or a majority of them, shall constitute a board of equalization of taxes for the territory. They shall hold a session at the office of the governor, at the capital of the territory, on the fourth Monday of July in each year, and it shall be the duty of said board to examine the various assessments as far as regards the territorial tax, and shall equalize the valuation of real property, among the several counties and towns in the territory in the following manner:

First, They shall add to the aggregate valuation of real property in each county, which they shall believe to be valued below its proper valuation, such per centum in each case, as will rise the same to its proper valuation.

Second, They shall deduct from the aggregate valuation of real property of each county, which they shall believe to be valued above its proper valuation, such per centum in each case as will reduce the same to its proper valuation.

Duty of auditor

SEC. 32. Said auditor shall keep a full record of the

proceedings of said meetings, immediately after the adjournment of which, he shall transmit to the county clerk of each county, a statement of the per centum to be added to or deducted from the valuation of real property in his county, and shall, on or before the second Monday of August in each year, notify each county clerk of the rate of territorial tax that has been determined upon by said governor, treasurer and auditor, to be levied and collected in each county, which shall not exceed three mills on the dollar of valuation, and when the territorial board of equalization fixes no different rate, or if for any reason the board should fail to sit, or the county clerk should fail to receive the statement of the rate of tax ordered by them, by the second Monday of August in each year, then the rate first mentioned in this act shall be deemed to be levied for territorial purposes, and the clerk of each county in making up the tax list required by section thirty of this act, shall compute and carry out in the proper column, a territorial tax, at the rate aforesaid. Any clerk failing to perform any duty enjoined upon him by this act, may be fined in any sum not less than five hundred dollars, nor more than three thousand dollars, to be recovered against him and his sureties, by an action of debt in the name of the people of the territory of Wyoming, and shall also be liable on his official bond to any person who may have suffered damage thereby.

Auditor should keep full record.

SEC. 33. On the fourth Monday in August in each year, the board of county commissioners shall, by an order to be entered of record among their proceedings, levy the requisite taxes for the year, and the same may be levied at any time prior to the fourth Monday in August, if the statement and notice required by section thirty-two of this act has been received from the auditor. Immediately after the taxes are levied, the county clerk shall make out a tax list in tabular form and in alphabetical order, having distinct columns for lands, and for town lots and their value, and for the value of personal and other property, and for carrying out in a column by itself, the amount of each different tax,

Taxes, when levied.

and having one or more columns for delinquent taxes. Such list may be in the following form :

Form.	Owner's Name.	Part of Section.	Section.	Township.	Range.	Acres.	Name of Town.	Lot.	Block.	Value of Real Estate.	Value of Personal and Other Property.	Poll Tax.	Territorial.	County Tax.	Poor and Paupers.	Roads and Bridges.	District Court.	School Tax.	Delinquent.	Delinquent.	Remarks.
	Prs'ty	n. e. 1/4	6	7	5	160					100	00	50	500	200	200	400	100			
	w 1/2	8	6	4	80								150	1500	600	600	1200	300			
	n. e. 1/4												50	500	200	200	400	100			
													50	500	200	200	400	100			
													100	1000	400	400	800	200			

Entry required

SEC. 34. An entry is required to be made upon the tax list, by the county clerk in the form of a certificate under seal, showing what it is, and for what county and year it is, and he shall also attach to this list his warrant, under his hand and official seal, in general terms requiring the collector to collect the taxes therein levied, according to law; and no informality in the above requirements, shall render any proceeding for the collection of taxes illegal. The clerk is required to deliver the list or cause the same to be delivered to the collector of the county by the first Monday of September in each year, and the collector's receipt shall be taken therefor, and such list shall be full and sufficient authority for the collector to collect all taxes therein contained.

When list is to be delivered.

Duties of collector on receiving tax list, &c.

SEC. 35. The collector, on receiving the tax-list and warrant, shall proceed immediately to collect the taxes therein levied, and the list and warrant thereto attached shall be his authority and justification against any illegality in the proceedings, prior to receiving the list. He shall be required to call upon and demand from each tax-payer named in the list the amount of his, her or their tax, as therein specified before the first Monday of October, following his receipt of said list, and he is also authorized and required to collect, as far as practicable, the taxes

remaining unpaid on the list of former years; the collector shall receipt to each person or corporation for the amount of tax received by him from them, specifying therein each kind of tax, and when the same was paid, and shall make the proper entries of such payment on the tax list.

SEC. 36. Territorial warrants are receivable for the full amount of taxes payable into the territorial treasury; money only is receivable at the county treasury of the proper county for poll tax and school tax; all other county taxes may be paid in county warrants. When a territorial or county warrant of any kind is received by the collector for taxes, he is directed to indorse on it the name of the person from whom he received it—the amount for which it was received and the date thereof, and from that date the warrant is to be regarded as cancelled, and cannot be re-issued, but when the county warrant amounts to more than is to be paid by the person presenting it for taxes, the collector will give him a certificate of the balance due him, which shall entitle him to another warrant on the same fund as the original warrant, on presentation of said certificate to the board of county commissioners. Warrants receivable.

SEC. 37. If, on the assessment roll, or on the tax list, there be any error in the name of a person taxed, the name may be changed, and the tax collected from the person intended, if he be taxable, and can be identified by the collector or assessor; and when the collector, after the tax-list is committed to him, ascertains that any land or other property is omitted, he will report the fact to the assessor, who, upon being satisfied thereof, will enter it upon his assessment roll, and assess the value, and the collector will enter it upon the tax list, and collect the tax as in other cases. In case of error in name.

SEC. 38. It shall be the duty of every person subject to taxation at some time before the time mentioned in section thirty-five of this act, to pay his or her or their taxes, and if any one neglect or refuses to pay them before said first Monday in October following the levy of the tax, the collector is directed, and shall make the same by distress (On neglect or refusal to pay taxes.)

and sale of his, her, or their personal property, excepting such as is exempt from taxation, and the tax list alone shall be a sufficient warrant for such distress.

When collector
distresses goods.

SEC. 39. When the collector distrains goods, he may keep them at the expense of the owner, and shall give notice of the time and place of their sale, within five days after the taking, in the manner constables usually are required to give notice of the sale of personal property under execution, and the time of sale shall not be more than ten days from the day of the taking, but he may adjourn the sale from time to time, not exceeding three days, and shall adjourn at once when there are no bidders, and in case of adjournment he shall put up a notice thereof at the place of sale. Any surplus remaining above the taxes, charges of keeping, transportation and fees of sale, shall be returned to the owner, and the collector shall, on demand, render an account in writing of the sale and all charges.

If the collector
be resisted, or
impeded.

SEC. 40. If the collector be resisted or impeded in the execution of his office, he may require any suitable person or persons to aid him therein, and if such person or persons refuse to give such aid, he, or each of them, shall forfeit a sum not exceeding ten dollars, to be recovered by civil action in the name of, and to the use of the county, before any justice of the peace, on the complaint of said collector, or any other person, and the person or persons resisting shall be liable, as in the case of resisting the sheriff in the execution of civil process.

Unpaid taxes
delinquent, when.

SEC. 41. On the first Monday of November in each year, the unpaid taxes of that year become delinquent, and shall draw interest at the rate of twenty-five per centum per annum until paid or collected by distress and sale, and taxes upon real property are hereby made a perpetual lien thereupon, against all persons or corporations except the United States and this territory, and taxes due from any person on personal property, shall be a lien on any real property owned by such person.

SEC. 42. On the first Monday of November in each

year the county collector shall make a final settlement with the county treasurer, and shall return a list of all unpaid taxes, and the taxes collected, after deducting eight per cent. thereof for his services in collecting the same, and thereafter all delinquent taxes shall be payable to the county treasurer, and each collector shall, also, at least once in each week during the time he is collecting, pay over to said treasurer the amount of money then in his hands payable to said treasurer, under any existing laws of this territory, taking the receipt of the treasurer for the same, and if any collector shall fail or refuse to make any payment or settlement required by law, he may be fined in any sum not less than one thousand dollars, nor more than five thousand dollars, to be recovered by action of debt by the board of county commissioners in the name of and to the use of the people of the territory of Wyoming.

First Monday
in November. fi-
nal settlement.

SEC. 43. In all cases where any person shall pay any tax or any portion thereof, that shall thereafter be found to be erroneous or illegal, whether the same be owing to clerical or other errors, the board of county commissioners shall direct the treasurer to refund the same to the taxpayer, or in case any real property, subject to taxation, shall be sold for the payment of such erroneous tax, the error in tax may at any time be corrected as above provided, and shall not effect the validity of the sale, but such property shall be redeemed by the county as hereinafter set forth.

Erroneous pay-
ment.

SEC. 44. The treasurer shall give notice of the sale of real property for delinquent taxes, by publication thereof, once a week for four weeks, in a newspaper in his county, if there be one, the first insertion of which notice shall be at least four weeks before the day of sale, and by a written notice posted on the door of the court house, or building commonly used therefor, for four weeks before the sale, and if there be no newspaper published in the county, the like notice shall be given by posting one written notice in each of the most public places in the county in which any land to be sold is situated, and one on the court house door, or door of

Notice of sale.

the county building. Such notice shall contain a notification that all lands on which the taxes of _____ have not been paid, will be sold, and the time and place of such sale, with a list of the lands. Ten per cent. upon the amount of taxes due shall be added when lands are advertised.

Where to take place.

SEC. 45. Such sale is directed to take place at the court house or county building, as herein provided, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon, and may be adjourned from day to day, Sundays excepted, until all the lands are sold.

Who the purchaser.

SEC. 46. The purchaser who offers to pay the amount of taxes due on any parcel of land for the smallest portion of the same, is to be considered the purchaser. The homestead is liable to be sold for no tax save that which is due on itself exclusively, and to that end the quantity of land bid in may be obtained by drawing the division line in any direction, so as to avoid the homestead.

Persons purchasing shall pay taxes.

SEC. 47. The person purchasing any lot or parcel of land shall forthwith pay to the treasurer the amount of taxes and costs on said lot or parcel of land, and on failure to do so, said land shall at once be sold again, in the same manner as if no sale had been made.

Mistake in advertisement not to effect sale.

SEC. 48. No irregularity or informality in the advertisements shall effect in any manner the legality of the sale, or the title to any real property conveyed by the treasurer's deed under this act, but in all cases the provisions of this act shall be deemed sufficient notice to the owners of the sale of their property.

Certificate of purchase.

SEC. 49. The county treasurer shall make out, sign and deliver to the purchaser of any real property sold for the payment of taxes as aforesaid, a certificate of purchase, describing the property on which the taxes and costs were paid by the purchaser, as the same are described in the record of sale, and also how much and what of each lot or parcel of land was sold. If any person shall become the purchaser of more than one lot or parcel of land, he may have the whole put in one certificate. For each certificate,

the purchaser shall pay the treasurer a fee of fifty cents.

SEC. 50. Such certificate of purchase shall be Certificate assignable by indorsement. assignable by indorsement, and such assignment shall vest in the assignee, or his legal representatives, all the right and title of the original purchaser.

SEC. 51. Real property sold under this act may be Real property sold may be redeemed. redeemed at any time before the expiration of two years from and after the date of the sale, by the payment to the treasurer of the proper county; to be held by him subject to the order of the purchaser, of the amount for which the same was sold, and thirty per cent. on the same, with twelve per cent. interest per annum on the whole amount, from the day of sale, and the amount of all taxes accruing after such sale, with twelve per cent. interest per annum, on such subsequent taxes, unless such subsequent taxes have been paid by the person for whose benefit the redemption is made, which fact may be shown by the collector's receipt; *Provided*, That if real property of any minor, married woman, or lunatic, be sold for taxes, the same may be Previse. redeemed at any time within one year after such disability be removed upon the terms specified in this section, which redemption may be made by the guardian or legal representatives.

SEC. 52. The county treasurer shall upon application Certificate of redemption. of any party to redeem any real property sold under the provisions of this act, and being satisfied that such party has a right to redeem the same, and upon the payment of the proper amount, issue to such party a certificate of redemption, setting forth the facts of the sale substantially as contained in the certificate of sale, the date of the redemption, the amount paid, and by whom redeemed, and he shall make the proper entries in the book of sales in his office, and shall immediately give notice of such redemption to the person holding the certificate of purchase.

SEC. 53. Immediately after the expiration of the term Deeds, when made out. of two years from the date of the sale of any lands for taxes, under the provisions of this act, which have not been redeemed, the treasurer then in office shall make out a deed,

for each lot or parcel of land sold and remaining unredeemed, and deliver the same to the purchaser; upon the return of the certificate of purchase, the treasurer is required to demand two dollars for each deed made by him on such sales; but any number of parcels of land bought by one person may be included in one deed, as may be desired by the purchaser.

Form of deed. SEC. 54. Deeds executed by the treasurer shall be substantially in the following form:

Know all men by these presents, that whereas, the following described real property, viz: (here insert the description) situated in the county of _____, and territory of Wyoming, was subject to taxation for the year (or years) A. D. _____; and whereas the taxes assessed upon said real property for the year (or years) aforesaid, remained due and unpaid at the date of such sale hereinafter named, and whereas the treasurer of the said county did on the _____ day of _____, A. D. 18____, by virtue of the authority vested by law, at (an adjourned sale), the sale begun and publicly held on the _____, A. D. 18____, expose to public sale at the court house (or county building) in the county aforesaid, in substantial conformity with all the requisitions of the statute in such case made and provided, the real property above described, for the payment of the taxes, interest and costs then due, and remaining unpaid on said property, and whereas at the time and place aforesaid, A. B., of the county of _____, and _____ of _____, having offered to pay the sum of _____ dollars and _____ cents, being the whole amount of taxes, interest and costs then due and remaining unpaid on said property for (here follows a description of the property sold) which was the least quantity bid for, and payment of said sum having been made by him to the said treasurer, the said property was stricken off to him at that price (and whereas the said A. B., did on the _____ day of _____, A. D. 18____, duly assign the certificate of the sale of the property as aforesaid, and all his right, title and interest to said property, to C. D., of the county of _____, and _____ of _____); and whereas two years have elapsed since the date of said sale, and the said

property has not been redeemed therefrom, as provided for by law; now, therefore, I, E. F., treasurer of the county aforesaid, for and in consideration of the said sum to the treasurer paid, as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said A. B. (or C. D.,) his heirs and assigns, the real property last hereinbefore described, to have and to hold unto him, the said A. B. (or C. D.,) his heirs and assigns forever, subject, however, to all the rights of redemption provided by law.

In witness whereof, I, E. F., treasurer, as aforesaid, by virtue of the authority aforesaid, have hereto subscribed my name, on this day of A. D. 18 .

E. F., Treasurer.

Which deed shall be acknowledged by the treasurer before the clerk of the district court, as follows:

TERRITORY OF WYOMING, } ss.
County.

I hereby certify, that before me the undersigned, ——— in and for said county, personally appeared the above named E. F., treasurer of said county, at the date of the execution of the above conveyance, and to be the identical person whose name is affixed to, and who executed the above conveyance, as treasurer of said county, and who acknowledges the execution of the same to be his voluntary act and deed, as treasurer of said county, for the purposes therein expressed. Given under my hand (and official seal) this ——— day of ———, 18——.

Treasurer's
acknowledgment

[seal.] ———, Clerk of District Court.

SEC. 55. When by mistake or unlawful act of the treasurer, land has been sold, on which no tax was due at the time, or whenever land is sold unlawfully in consequence of any other mistake or irregularity rendering the same void, the county shall hold the purchaser harmless by paying him the amount of principal, interest and cost to which he would have been entitled had the land been rightfully sold, and the treasurer and his sureties will be liable to the county for

Land sold by
mistake.

Previo. the amount; *Provided*, That the treasurer or his sureties shall be liable only for his own or his deputies acts.

Books and records sufficient evidence of sale.

SEC. 56. The books and records belonging to the offices of the clerk of the board of county commissioners and the county treasurer, or copies thereof duly certified, shall be deemed sufficient evidence to prove the sale of any real property for taxes, the redemption thereof, or the payment of the taxes thereon.

No action maintained unless.

SEC. 57. No action for the recovery of real property, sold for non-payment of taxes, shall be maintained unless the same be brought within six years after the date of the sale for taxes aforesaid.

Each county responsible.

SEC. 58. Each county is responsible to the territory for the amount of tax levied for territorial purposes, excepting such amounts as are certified to be unavoidable, double, or erroneous assessments.

If treasurer default.

SEC. 59. If any county treasurer prove to be a defaulter for territorial revenue, such amount shall be made up to the territory within the next two years, in such manner as the county commissioners may direct; in such cases, the county can have recourse to the official bond of the treasurer for indemnity.

Duty of treasurer.

SEC. 60. It shall be the duty of the treasurer of each county to make a settlement annually with the board of county commissioners on the second Monday of December, and as often during each year as said board may require it, and immediately thereafter, the treasurer of each county shall make a full and complete settlement with the territorial treasurer, for the preceding year, and for his services as treasurer, he shall be allowed five per cent. on the dollar on all sums received and paid out by him, school money included, and shall be allowed fifteen cents per mile for going to and returning from territorial treasurer's office, to make an annual settlement, to be deducted out of territorial tax; and upon his failure or refusal to make such settlements as required, he shall be fined in any sum not less than one hundred dollars, nor more than one thousand dollars, to be recovered by action in the

district court, against the treasurer and his sureties, by the board of county commissioners.

SEC. 61. Any officer neglecting or refusing to comply with any of the requirements of this act, for whose negligence or failure no other penalty is provided by this act, shall be liable to a fine not exceeding one thousand dollars, to be recovered against him and his sureties as provided in this act. Any officer neglecting or refusing.
Penalty.

SEC. 62. This act shall take effect and be in force from and after its passage.

Approved, December 10, 1869.

WAGON ROAD.

CHAPTER 29.

AN ACT TO LOCATE AND ESTABLISH A TERRITORIAL WAGON ROAD FROM THE TOWN OF WYOMING, ALBANY COUNTY, TO THE "LAST CHANCE" GOLD MINING DISTRICT.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

SEC. 1. That Charles H. Buzzard, Philip Mandel, and John H. Mansfield be and are hereby appointed commissioners to locate and establish a territorial wagon road from the town of Wyoming, Albany county, to the "Last Chance" gold mining district, by the shortest and most practicable route. Commissioners to locate, &c.

SEC. 2. It shall be the duty of said commissioners, or a majority of them, to meet at Wyoming, in aforesaid Albany county, on or before the first Monday in June, eighteen hundred and seventy, and proceed to locate the said road. Commissioners duty.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved 9th December, 1869.

LUNATICS AND DRUNKARDS.

CHAPTER 30.

AN ACT CONCERNING LUNATICS AND HABITUAL DRUNKARDS.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SEC. 1. If information in writing be given to the probate judge that any person in the county is an idiot, lunatic or person of unsound mind, or an habitual drunkard, and incapable of managing, and praying that an inquiry thereinto be had, the court, if satisfied that there is good cause for the exercise of its jurisdiction, shall cause the facts to be inquired into by a jury.

When information in writing be given.

Information may also be given.

SEC. 2. Such information may also be given in the vacation of said court to the judge thereof, in which event he shall call a special term of the court for the purpose of holding an inquiry, whether the person mentioned in such information be of unsound mind or an habitual drunkard or not.

The probate court may.

SEC. 3. In proceedings under this act the probate court may, in its discretion, cause the person alleged to be of unsound mind or an habitual drunkard to be brought before the court.

When to make application to probate court.

SEC. 4. Whenever any judge of the probate court, justice of the peace, sheriff, coroner, or constable shall discover any person resident of his county to be of unsound mind or an habitual drunkard, (as in the first section of this act mentioned) it shall be his duty to make application to the probate court for the exercise of its jurisdiction, and

Whereupon the like proceedings shall be had, as in the case of information by unofficial persons.

SEC. 5. If it be found by the jury that the subject of inquiry is of unsound mind or an habitual drunkard, and incapable of managing his or her affairs, the court shall appoint a guardian of the person and estate of such person. When court shall appoint guardian

SEC. 6. When any person shall be found to be insane or an habitual drunkard, according to the preceding provisions, the cost of the proceedings shall be paid out of his estate, or if that be insufficient, by the county. Costs, how paid.

SEC. 7. If the person alleged to be insane or an habitual drunkard, shall be discharged, the costs shall be paid by the person at whose instance the proceeding is had. Iditto.

SEC. 8. The court may, if just cause appears at any time during the term at which an inquisition is had, set the same aside and cause a new jury to be impanelled to inquire into the facts, but when two juries concur in any case, the verdict shall not be set aside. New jury to be impanelled.

SEC. 9. Every guardian of a person of unsound mind, or an habitual drunkard, before entering upon the duties assigned him, shall enter into bond to the territory of Wyoming in such sum and with such security as the court shall approve, conditioned that he will take due and proper care of such insane person or habitual drunkard, and manage and administer his estate and effects to the best advantage, according to law, and will faithfully do and perform all such other acts, matters and things touching his guardianship, as may be prescribed by law, or enjoined on him by the order, sentence or decree of any court of competent jurisdiction. (Guardian to give bond.

SEC. 10. The court may, at any time, require of any such guardian to give a new bond or additional security as the circumstances of the case shall require, and if any order for that purpose be not complied with, within a reasonable time to be therein named, the appointment of the guardian may be revoked and another appointed, who will give the bond and the security required. Additional bond.

SEC. 11. Every bond given by such guardians shall be deposited with the judge of the probate court making the Deposited with Judge of probate.

appointment, and a copy thereof duly certified by said judge shall be evidence in all respects as the original.

Notice of appointment.

SEC. 12. It shall be the duty of every such guardian within thirty days after his appointment, to cause a notice thereof to be published, at such time and in such manner as the probate court shall order.

Guardian to support the person.

SEC. 13. Every such guardian shall take charge of the person committed to his charge, and provide for his support and maintenance as hereinafter directed.

Take possession of goods.

SEC. 14. It shall be the duty [of the guardian] to collect and take into his possession the goods, chattels, moneys and effects, books and other evidences of debt, and all writings touching the estate, real and personal of the person under his guardianship.

Inventory.

SEC. 15. Within three months after his appointment, such guardian shall make out and file with the probate court by which he was appointed, a just and true inventory of the real and personal estate of his ward, stating the income and profits thereof, and the debts, credits and effects, so far as the same shall have come to the knowledge of such guardian.

Additional inventory.

SEC. 16. Whenever any property belonging to such estate shall be discovered after filing any inventory, it shall be the duty of the guardian to file as aforesaid, an additional inventory, containing a just and true account of the same from time to time, as the same shall be discovered.

Attested.

SEC. 17. All such inventories shall be made in the presence of and attested by two credible witnesses of the neighborhood, and shall be verified by oath or affirmation of the guardian.

Prosecute and defend.

SEC. 18. It shall be the duty of every such guardian to prosecute and defend all actions instituted in behalf of or against his ward, to collect all debts due or becoming due to his ward, and give acquittances and discharges therefor, and to adjust, settle and pay all demands due or becoming due from his ward, so far as his effects and estate will extend as hereinafter provided.

Order of court.

SEC. 19. Every probate court by whom any insane person or habitual drunkard is committed to guardianship,

may make an order for the restraint, support and safe keeping of such person, for the management of his estate, for the support and maintenance of his family and education of his children out of the proceeds of such estate; to set apart and reserve for the payment of debts, and to let, sell or mortgage any part of such estate, real or personal, when necessary for the purposes above specified.

SEC. 20. Whenever the personal estate of any such insane person or habitual drunkard, shall be insufficient for Petition to sell, &c. the discharge of his debts, the maintenance of himself and his family, or the education of his children, it shall be the duty of the guardian to apply by petition to the court by which he was appointed, praying authority to mortgage, lease or sell the whole or as much of the real estate of such person as shall be necessary to supply the deficiency.

SEC. 21. The petition shall set forth the particulars of Petition, what to contain. the amount of the estate, real and personal, of such insane person or habitual drunkard, and of the debts by him owing, accompanied by a full, true and perfect account of the guardianship of the petitioner, showing the application of the funds which may have come to his hands.

SEC. 22. If it appears to the court upon examination of the matter, that the personal estate is insufficient for Order for sale, &c. the purposes above mentioned, and that the property has been applied as far as the circumstances of the case rendered proper, the court shall make an order directing the mortgage, lease or sale of the whole or such part of the estate as may be necessary or proper.

SEC. 23. The court, making such order, shall direct the time and terms of sale, or if a mortgage or lease be ordered, the terms of such mortgage or lease, and the manner in which such proceeds shall be secured, and the income or produce thereof be appropriated. Terms of sale, &c.

SEC. 24. When a sale of real estate shall be ordered, Notice. the guardian shall cause notice of the time place and terms of sale, together with a description of the property to be sold, to be published four weeks successively in some newspaper in or nearest to the county in which the premises to

be sold are situated, and shall also put up like notices at six of the most public places in such county, six weeks before the day of sale.

Guardian, shall
sell lands, &c.

SEC. 25. Such guardian shall, at the time and place appointed for the sale, sell such lands at public auction to the highest bidder, and make report of his proceedings to the court at the term next succeeding the sale.

The report shall

SEC. 26. The report shall be verified by the affidavit of the guardian, which affidavit shall also state that such guardian did not directly or indirectly become the purchaser of the property sold, and that he was in no wise interested in the purchase thereof.

Guardian shall
execute a deed.

SEC. 27. If the court approve the proceedings, the guardian shall execute a deed to the purchaser, reciting the order of sale and conveying to the purchaser, all the estate, right, title and interest of such insane person to the estate sold.

Court may set
aside sale.

SEC. 28. If the report be disapproved, the court may set aside the sale, and order all money paid, to be refunded, and all securities given to be cancelled, and may renew the order of sale as often as may be necessary, until the proceedings are approved.

When court
shall order lease.

SEC. 29. When the court shall order a lease or mortgage of any estate, no deed or instrument of writing shall be executed for that purpose, until the court shall have approved the agreement made by the guardian under such order.

Conveyance,
&c., when valid.

SEC. 30. Every conveyance, mortgage, lease and assurance, made under the order of a probate court pursuant to the provisions of this act, shall be as valid and effectual as if the same had been executed by such insane person or habitual drunkard, when of sound memory and understanding, or temperate.

Guardian to
render account.

SEC. 31. Every guardian appointed under this act shall, once a year or oftener, if thereto required by the court appointing him, render to such court a just and true account of his guardianship, and make settlement thereof with such court.

SEC. 32. No contract of any person found to be of unsound mind or an habitual drunkard, as hereinbefore specified, which shall be made without the consent of his guardian, shall be valid or binding, and such guardian may sue for the recovery of any money or property which may have been sold or disposed of by his ward, without his consent.

Contract not binding.

SEC. 33. No such insane person or habitual drunkard shall be held to bail, nor shall his body be taken in execution on any civil action.

Not held to bail.

SEC. 34. In all actions commenced against such insane person or habitual drunkard, the process shall be served on his guardian; and on judgment against such person or his guardian as such, the execution shall be against his property only, and in no case against his body, nor against the body or estate of such guardian, unless he shall have rendered himself liable thereto by false pleading or otherwise.

Process on guardian.

SEC. 35. If any person shall allege in writing, verified by oath or affirmation, that any person declared to be of unsound mind or an habitual drunkard, has been restored to his right mind, or to temperate habits; the court by which the proceedings were had, shall cause the facts to be inquired into by a jury.

Restored to right mind.

SEC. 36. If it shall be found that such person has been restored to his right mind, he shall be discharged from care and custody, and the guardian shall immediately settle his accounts and restore to such person all things remaining in his hands belonging or appertaining to him.

Discharged and guardian to settle.

SEC. 37. In case of the death of any such insane person or habitual drunkard while under guardianship, the power of the guardian shall cease, and the estate descend and be distributed in the same manner as if such person had been of sound mind and temperate habits, and the guardian shall immediately settle his accounts and deliver the estate and effects of his ward to his personal representatives.

Death of insane person.

SEC. 38. The several probate courts shall have power to remove such guardians at any time for neglect of duty, or

Removal of guardians.

mismanagement, or disobedience to any lawful order, and appoint others.

Settlement.

SEC. 39. Whenever any such guardian shall be removed from his trust, he shall immediately settle his accounts, and render to his successor the estate and effects of his ward.

Power of probate court.

SEC. 40. The probate court shall have full power to control the guardian of any such insane person or habitual drunkard, in the management of the person and estate, and the settlement of his accounts, and may enforce and carry into execution their orders, sentences and decrees in the same manner as a court of chancery.

Particularly mad.

SEC. 41. If any person, by lunacy or otherwise, shall be furiously mad, or so far disordered in his mind as to endanger his own person or the person or property of others, it shall be the duty of his or her guardian, or other person under whose care he or she may be, and who is bound to provide for his or her support, to confine him or her in some suitable place, until the next sitting of the probate court of the county, who shall make such order for the restraint, support and safe keeping of such person as the circumstances of the case shall require.

Who may make order of confinement.

SEC. 42. If any person, as in the last preceding section is specified, shall not be confined by the person having charge of him, or there be no person having such charge, any judge of a court of record, or any two justices of the peace may cause such insane person to be apprehended, and may employ any person to confine him or her, in some suitable place until the probate court shall make further order therein, as in the preceding section specified.

Who to pay expenses.

SEC. 43. The expenses attending such confinement shall be paid by the guardian out of his estate, or by the person bound to provide for and support such insane person, or the same shall be paid out of the county treasury.

Amount recovered by the county.

SEC. 44. In all cases of appropriations out of the county treasury, for the support and maintenance, or confinement of any insane person, the amount thereof may be recovered by the county from any person who, by law, is bound to provide for the support and maintenance of such

person, if there be any of sufficient ability to pay the same.

SEC. 45. This act shall take effect and be in force from and after its passage.

Approved, December 9th, 1869.

FEMALE SUFFRAGE.

CHAPTER 31.

AN ACT TO GRANT TO THE WOMEN OF WYOMING TERRITORY THE RIGHT OF SUFFRAGE, AND TO HOLD OFFICE.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming :

SEC. 1. That every woman of the age of twenty-one ^{Women's} years, residing in this territory, may, at every election to be holden under the laws thereof, cast her vote. And her rights to the elective franchise and to hold office shall be the same under the election laws of the territory, as those of electors.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved, December 10th 1869.

COUNCIL AND REPRESENTATIVE DISTRICTS.

CHAPTER 32.

AN ACT APPORTIONING THE TERRITORY OF WYOMING INTO COUNCIL AND REPRESENTATIVE DISTRICTS, AND FOR OTHER PURPOSES.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming :

SEC. 1. That hereafter the council of the territory of Wyoming shall consist of nine members, and the house of ^{Number in} representatives of thirteen members. ^{legislature.}

SEC. 2. The members of the council and house of

How apportioned.

representatives shall be apportioned among the several counties according to the population thereof, as shall appear by the census of the year one thousand eight hundred and seventy, as taken by the United States.

Who shall apportion.

SEC. 3. It shall be the duty of the members of the present legislature in their respective council and representative districts, between the first and fifteenth days of June, in the year one thousand eight hundred and seventy-one, to select one member of the council or house of representatives from each council district, who, when so selected, shall meet at the capitol of the territory between the fifteenth and thirtieth days of June, in the year one thousand eight hundred and seventy-one, and proceed to apportion the members of the council and house of representatives, as provided by this act.

How organize.

SEC. 4. At the meeting of the persons herein provided for, they shall organize as a "board of apportionment" by selecting one of their members chairman, and some outside person secretary, and shall proceed to apportion among the several counties, the members of the council and house of representatives to be elected at the general election following.

What shall be a council district.

SEC. 5. In making such apportionment, the said board shall recognize each county as a council district, and shall divide the whole population of the territory by nine, and give to each county as many members of the council as such county shall contain ninths of the population, and in case of any fraction less than one ninth, the counties having the largest fractions respectively, shall be entitled to the remaining members, the highest fraction being entitled first, and the second next, and so on.

Representative district.

SEC. 6. The same course shall be taken by the "board" in apportioning members to the house of representatives as in the council apportionment, except the whole number of the population shall be divided by thirteen, and each county, as representative district, shall be entitled to as many members of the house as such county shall contain thirteenthths of the population, and the highest fractions of a thirteenth shall draw after it a member, and should it transpire that one or more counties, because of the fractions, shall get both

a member of the council and house, it shall then be the duty of the "board" to take from the county having the lowest fraction of one-thirteenth, a member of the house, and such thirteenth man shall be a representative at large for the whole territory. When such appointment shall be made, the original paper showing the same, signed by the members of the "board," and attested by the clerk, shall be filed in the office of the territorial auditor, and a copy thereof certified by the chairman and clerk to be such, shall be sent by some safe conveyance to the county recorder of such county, who shall file the same in his office, and the county board of commissioners, at their first meeting, shall order the same spread upon the records of their "board."

SEC. 7. The secretary, in his notices to the sheriffs concerning elections, shall recognize the council and representative districts hereby created, and the number of members of both council and house as apportioned by the "board" hereby created, and shall notify sheriffs accordingly. The secretary shall, &c.

SEC. 8. The members of the "board" hereby created, shall be entitled to fifteen dollars per day for three days, and ten cents per mile travel each way to attend the meetings of such "board," to be audited and paid like other accounts against the territory of Wyoming. Pay of "board"

SEC. 9. This act shall take effect and be in force from and after its passage.

Approved, December 10th, 1869.

FEES OF OFFICERS.

CHAPTER 33.

AN ACT REGULATING THE FEES OF OFFICERS.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SEC. 1. That the persons and officers herein mentioned shall be entitled to receive for their services the fees herein (Clerk's fees in district court.

allowed, and none others, except as otherwise provided by law.

Every writ or process seventy-five cents; indorsing on writ of error, or summons under writ of error that is to operate as a supercedeas, ten cents; filing each paper in a case, ten cents; copy of a record or other paper, per sheet of one hundred words, or if the whole number of words in such copy be less than one hundred, fifteen cents; discontinuance or *retrazit*, twenty-five cents; bringing a particular record into court, fifty cents; entering satisfaction of record, twenty-five cents; receiving and entering verdict, twenty-five cents; entering defendant's appearance, fifteen cents; entering on docket, twenty-five cents; entering judgment fifty cents; swearing each witness, constable or baliff, ten cents; making up or entering up a complete record after judgment, per sheet of one hundred words, fifteen cents; searching the record within one year, twenty-five cents; every year back, fifteen cents; continuing cause, fifty cents; every issue joined, fifty cents; entering any principal motion, twenty-five cents; certificate and seal, one dollar; taking and approving every bond, one dollar; making out advertisement for non-resident defendant, one dollar; every hundred words contained in every writing required by law to be done by him, and for which there is no specific allowance, fifteen cents; for recording deed or other writing, where required, per hundred words, fifteen cents; indorsing on supercedeas or writ of error, direction to the clerk of the superior court, twenty-five cents; docketing judgment, fifty cents; issuing fee bills for fees not his own, fifty cents; entering the panel and swearing the jury, fifty cents; entering defendant's confession fifty cents.

Sheriff's fees.

SEC. 2. For serving a writ and taking into custody, one dollar and twenty-five cents; for every mile traveled in going and returning to serve process, fifteen cents; taking bail, one dollar; returning every writ, twenty-five cents; summoning a jury (with mileage as above), five dollars; executing writ of possession, three dollars; calling a jury in each cause, twenty-five cents; for each person committed to jail, one dollar and twenty-five cents; discharging every

person out of jail, seventy-five cents ; holding an inquisition, drawing up and returning the same, five dollars ; serving a summons, fifty cents ; attending a prisoner before a judge when surrendered by his bail, and receiving the prisoner into custody, one dollar ; boarding each prisoner per day, one dollar ; selling property on execution, a commission five per centum on the first three hundred dollars, and two per centum on any excess above that amount, and where the money is paid to him without sale, one half commission only shall be allowed ; taking the valuation of land, five dollars ; taking a replevin bond, one dollar ; serving a *capias ad satisfaciendum*, one dollar and fifty cents ; levying on property, and advertising the same without sale, two dollars (mileage as above) ; where no money is made, no other fee or reward shall be allowed on execution, except for expense of keeping property ; making a deed on sale of real estate on execution, four dollars ; serving a writ of attachment, two dollars and fifty cents. The sheriffs shall not be entitled to any fee for services performed by their bailiffs or deputies, when such bailiffs or deputies are receiving pay by the day from the county at the time such services are rendered ; for postage paid on letters directed to the clerks of the different courts, enclosing process issued by such court, the amount thereof to be returned as an item of charge. Executing judgment in capital cases, one hundred dollars, covering all expenses of himself and deputies.

Sec. 3. In criminal cases not provided for, the like fees as for services in civil cases shall be allowed said sheriff for taking a convict to the territorial prison, and all expenses incidental to the same, per mile, to be paid out of the territorial treasury, twenty-five cents ; for each additional convict taken at the same time, per mile, twenty cents ; for taking a prisoner to another county, such fees as the county tribunal transacting county business in the county where the prisoner was taken, may in their discretion, allow out of the treasury of the said county ; for each commitment and discharge for a prisoner under a city authority, fifty cents ; for collect-

Ditto.

ing county licenses eight per cent. of the amount of each license issued.

Prosecuting
attorney.

SEC. 4. No prosecuting attorney shall receive any fee or reward, from or on behalf of any prosecution or individual, for services in any prosecution or business to which it shall be his duty to attend. The prosecuting attorney shall receive fifteen dollars for every examination of a felony or of a capital case before a justice of the peace, and ten dollars for every case of petty larceny, or in other prosecutions where the justice of the peace shall have final jurisdiction of the cause, and ten dollars for every misdemeanor. The prosecuting attorney shall receive thirty dollars for prosecuting every felony in the district court, and ten dollars for every misdemeanor therein, and fifty dollars for every capital case, and in case of conviction in felonies, ten dollars, and twenty-five dollars for any conviction in capital cases in the district court in which he shall be engaged for the county or territory; for drawing every indictment, five dollars, but no fee for drawing any indictment shall be allowed when the indictment is quashed, and he shall receive reasonable fees for any other business he may attend to for the county or territory.

Clerk of su-
preme court.

SEC. 5. Docketing each suit, one dollar twenty-five cents; issuing summons or other writ, one dollar; indexing suit, twenty-five cents; entering appearance of attorney, twenty-five cents; filing each paper, ten cents; entering final judgment, one dollar; each motion in case, twenty-five cents; entering each order of court in journal, twenty-five cents; recording papers, per folio, fifteen cents; making complete record per folio, fifteen cents; taking acknowledgments, seventy-five cents; administering oaths, ten cents; taking depositions, per folio, fifteen cents; filing and recording and issuing certificate of declaration of intention of an alien to become a citizen of the United States, two dollars; final naturalization and record, two dollars and fifty cents; making and recording certificate of appointment of United States commissioner, one dollar; making and docketing fee bill, twenty-five cents.

SEC. 6. For appointing an executor, administrator,

guardian or trustee and certifying same if contested, five dollars; if not contested, two dollars and fifty cents; for granting letter testamentary or of administration, and affixing seal thereto, three dollars; taking bond of administrator, executor, or guardian, and approving same, one dollar; administering oath to each executor, administrator or guardian, twenty-five cents; taking proof of will or codicil, when contested, ten dollars; where not contested, four dollars; for recording any will, codicil or other paper, for each one hundred words, fifteen cents; for examining inventory, for each one hundred words, fifteen cents; for recording letters of administration, each one hundred words, fifteen cents; for examining bill of sale, account current filed by an executor, administrator or guardian, for each one hundred words, twenty-five cents; for entering the settlement of executors, administrators and guardians, for each one hundred words, fifteen cents; for all copies of orders, papers and proceedings, fifteen cents per folio of one hundred words; for each decree limiting the time of exhibiting the claims of creditors, one dollar; for each order of distribution, three dollars; for exemplified copies of records, per folio of one hundred words, fifteen cents; for making order for publication of any notice, one dollar and fifty cents; allowing appeal to district court, two dollars; issuing each writ, summons or citation, one dollar; administering oath and certificate thereof, fifty cents; administering oath to witness, fifteen cents; issuing subpoenas, seventy-five cents; entering each order, decree or judgment, not herein enumerated, one dollar; filing any paper pertaining to any estate, fifteen cents; granting letters of guardianship, or trusteeship, two dollars; for taking and approving any bond, not herein before specified, one dollar; for revoking letters testamentary of administrators, guardianship or trusteeship, two dollars; administering oath to jury, one dollar; taking acknowledgment of any kind, seventy-five cents; issuing venire for a jury, one dollar; entering verdict, fifty cents; allowing or disallowing demands against an estate, one dollar each; disallowing applications for letters of administration, four

dollars: decree for settling an estate, five dollars; for hearing any complaint, petition or action, three dollars; for hearing or entering every motion, one dollar; for entering order of continuance, fifty cents; warrant to appraise and divide an estate, one dollar; ordering allowance to widows and minors, one dollar; for making and entering each order for the sale of personal property, one dollar; for making and entering each order or decree for the sale or partition of real estate, two dollars; for granting reference of accounts, two dollars and thirty-seven cents; for a warrant to set off the dower, three dollars; for proportioning insolvent estate, five dollars; for extending the time for selling an estate, three dollars; for ordering and drawing quietus, two dollars for each; to divide an estate, one dollar; for entering and filing caveat, fifty cents; for searching record for each year, fifty cents; copies and exemplifications of any paper or record, twenty-five cents for one hundred words; for each motion, fifty cents; for solemnizing marriages, five dollars.

Justice of the
peace.

SEC. 7. For docketing each case, twenty-five cents; for issuing a summons, warrant, subpoenas, for one person, seventy-five cents; for each additional person, fifty cents; for each order of arrest, seventy-five cents; for each attachment against property, one dollar; for attachment against persons for contempt, seventy-five cents; for each mittimus, one dollar; for each *venire*, one dollar; for each execution or order of sale, one dollar; for each writ of restitution, one dollar; for writ of forcible entry and detainer, one dollar; for every writ of replevin, one dollar; for every other writ, fifty cents; for hearing each preliminary or dilatory motion, fifty cents; for judgment on merits for costs, fifty cents; for every judgment, twenty-five cents; for dismissal or discontinuance, fifty cents; for taking verdict, twenty-five cents; for making up docket, each one hundred words, fifteen cents; for each certificate, fifty cents; for transcript of docket for any purpose, one dollar and fifty cents; for swearing a jury, fifty cents; for administering each oath, twenty-five cents; for filing each paper, twenty cents; for taking each bond or undertaking, fifty cents; for

appointing a special constable, fifty cents; for taking acknowledgment of one person, seventy-five cents; each additional person, twenty-five cents; for trying each cause of forcible entry and detainer, two dollars; for trying civil cases, one dollar; for taking each deposition, two dollars; for writing affidavit, or other writing not provided for, each one hundred words, twenty-five cents; for writing satisfaction of judgment, fifty cents; for entering amicable suit, one dollar; for opening judgment, one dollar; for issuing notice to take depositions, one dollar; for taking bond and making return to appeal, two dollars; for making return to writ of *certiorari*, for each one hundred words, thirty cents; for entering judgment by confession, one dollar; for entering judgment where jury is called, one dollar; for all trials that consume more than one day, two dollars; for every continuance or adjournment, fifty cents; for each criminal complaint, one dollar; for each criminal warrant, one dollar; for order on jailor, fifty cents; for trying each criminal cause or examination in any criminal case, one dollar; for order to discharge prisoner, fifty cents; for each search warrant, one dollar; for taking acknowledgments to deeds, &c., one dollar; for taxing costs, twenty-five cents; for performing duties of coroner, same fees as are allowed coroners; for marrying each couple and making returns, five dollars; for all amounts of money collected without suit, on the dollar, five per cent.

SEC. 8. Coroners shall be allowed eight dollars for each inquest, and fifteen cents for each mile necessarily traveled in going to and returning from the place of inquest, to be paid by the county. For all services performed in the place of the sheriff, the same fees as are allowed to the sheriff for his services.

Coroners.

SEC. 9. For serving a warrant or other writ, not being provided for on each person named therein, one dollar; for copy of every summons, delivered on request, or left at the place of residence of the defendant, thirty cents; for serving summons or subpoena on each party or name therein, fifty cents; for serving attachment, one dollar; for copy of

Constable

attachment, forty cents; for each copy of inventory of property seized on an attachment, fifty cents; for issuing summons on garnishee, one dollar; for copy of an affidavit, or other paper not otherwise enumerated, per folio, fifteen cents; for posting up of each notice, twenty-five cents; for each mile actually and necessarily traveled to serve any process, to give or post up notice, twenty-five cents; committing to prison, one dollar; for summoning jury, two dollars; for actual attendance upon court in each case, one dollar; for writing list of jurors, twenty-five cents; for attending a jury, one dollar; on all sums made on execution, and paid over, charged against defendant, five per cent.; for notifying plaintiff of a service of a warrant or a summons, or attachment returnable, thirty cents; for serving any writ of replevin, one dollar; for summoning and swearing appraisers, and taking appraisment, one dollar and fifty cents; for taking and approving security in any case, one dollar.

Printer's fees.

SEC. 10. When any party brings suit by publication, said party shall deposit the fees of the printer in advance with the sheriff, to be recovered along with other costs.

Officer's fees in advance.

SEC. 11. That in all suits at law commenced by any person or persons, officers shall have the right to ask, demand and receive from the person commencing suit, their fees in advance for any duties to be performed in such suit.

Reasonable compensation.]

SEC. 12. That for any services rendered by any officer wherein no fees are allowed by this act, nor any other act or provision of law, such officer shall be allowed a reasonable compensation therefor.

Register of deeds.

SEC. 13. For recording any deed, mortgage or other instrument, where said instrument contains less than one hundred words: A deed, one dollar; a mortgage, one dollar; bill of sale, one dollar; and where such instrument contains more than one hundred words, he shall receive for recording such instrument, one dollar for the first one hundred, and fifteen cents for each subsequent hundred words contained therein; for attending meetings of the board of county commissioners, in his capacity as county

clerk, five dollars for each meeting when his services are actually needed.

SEC. 14. For furnishing abstract of any description to the party requesting or demanding it, two dollars to be paid by such party so demanding it; and for any other services not enumerated in this act, such fee as shall be deemed reasonable.

SEC. 15. Each juror shall receive three dollars per day from the time they are summoned to appear until discharged by the court, and ten cents per mile for going and returning. Jurors.

SEC. 16. Judges of election shall receive four dollars per day, and clerks of election shall receive six dollars per day. Judges and clerks of election.

SEC. 17. Each witness in the district or probate court shall receive three dollars per day, and in justices courts, dollars per day each, and witnesses may in all cases demand and receive their fees in advance, for the number of days which they are required to be in attendance. Witnesses.

SEC. 18. Arbitrators shall receive five dollars per day, to be taxed in the bill of costs. Arbitrators.

SEC. 19. Appraisers shall receive three dollars per day, to be taxed in bill of costs. Appraisers.

SEC. 20. This act shall take effect and be in force from and after its passage.

Approved 10th December, 1869.

UINTA COUNTY.

CHAPTER 34.

AN ACT TO CREATE AND ESTABLISH THE COUNTY OF UINTA.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

Boundaries. SEC. 1. That all that portion of the territory of Wyoming, bounded and described as follows, be, and the same is hereby erected into a county by the name of Uinta: Commencing at the intersection of the forty-first parallel of latitude, and the thirty-third meridian of longitude west from Washington, running thence north along said thirty-third meridian of longitude, to its intersection with the forty-fifth parallel of latitude; thence west along said forty-fifth parallel of latitude, to its intersection with the thirty-fourth meridian of longitude west from Washington; thence south along said thirty-fourth meridian, to its intersection with the forty-first parallel of latitude; thence east along said parallel to its place of beginning.

County seat. SEC. 2. That the county seat of said county be temporarily located at Merrill, near Fort Bridger, until the people of said county shall, at their first election for county officers, definitely fix upon a county seat for said county.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved 1st December, 1869.

SWEETWATER COUNTY.

CHAPTER 35.

AN ACT IN RELATION TO THE ORGANIZATION OF THE COUNTY OF SWEETWATER, AND TO PROVIDE FOR THE APPOINTMENT OF OFFICERS THEREIN.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SEC. 1. That all of that portion of the territory of Wyoming erected into the county of Carter, by an act of the legislative assembly of the territory of Dakota, approved December 27th, 1867, and bounded as follows: Beginning at the forty-fifth parallel of latitude, where the thirty-third meridian of longitude crosses the said parallel of latitude. thence south along said meridian being the eastern line of Uinta county, to the forty-first parallel of latitude, being the southern boundary of the territory; thence east, along the said southern boundary to a point thirty degrees and thirty minutes west from Washington; thence north along said meridian [of] thirty [degrees and] thirty minutes west, to the forty-fifth parallel to a point thirty degrees and thirty minutes west from Washington; thence west along said forty-fifth parallel to the place of beginning, shall be and continue a county by the name of Sweetwater; *Provided*, That the eastern line of said county shall be deemed to run one-fourth of one mile west of Separation station upon the Union Pacific Railroad, until a government or territorial survey shall prove said station to be west of the said east line. The county seat of Sweetwater county shall be located at South Pass City until removed according to law.

SEC. 2. The following officers are hereby appointed for

Officers.

said county of Sweetwater, who, after being qualified, shall hold their offices until the next general election, and until their successors are elected and qualified: For county commissioners, W. C. Erwin, of South Pass City, and James A. Brennan, of Atlantic City, and John Dugdale of Hamilton City; for judge of probate, T. Quinn; for sheriff, John McGlinchy; for county clerk, Tim McCarthy; for prosecuting attorney, P. L. Williams; for county assessor, Henry Smith; for county superintendent of schools, Frank Gilman; for county surveyor, Wm. Smith, of South Pass City; for coroner, John Morris; for justices of the peace for South Pass precinct, James W. Stillman and Presley J. Talbot; for constable in said precinct, James Smith; for justice of the peace for Atlantic City, Edward Lawn; for constable in said Atlantic City precinct, W. Hagan; for justice of the peace at Bryan precinct, William Grinnell; for constable in said precinct, _____; for justice of the peace at Point of Rocks precinct, _____; for constable in said precinct, _____.

Duties of sheriff.

SEC. 3. Nothing in this act contained shall be so construed as to require the present sheriff of said county to turn over to his successor in office, any papers in his hands as such sheriff of Carter county, but all such papers shall be by said sheriff retained and served, or executed and returned to the court or judge from whence or by whom they were issued, according to law, up to and including the eleventh day of December, instant, and said sheriff as collector shall return the tax roll to the board of county commissioners on or before the thirteenth day of December instant, and when such return shall be made the sheriff shall make a full settlement with the county commissioners, (who are hereby authorized to hold a special session for that purpose,) and pay over to the county treasurer all moneys collected by him for and on account of the territory or county, or any public fund, and the successor of such sheriff is hereby authorized to do and perform all things necessary as sheriff or collector to complete those acts as sheriff or collector, required by law of such sheriff or collector, all executions and other process

of any name or kind which shall be partially executed, upon the taking effect of this act, shall pass over to the sheriff hereby appointed, and he shall have full power and authority to execute the same in the same manner as the present sheriff might or could do but for the passage of this act, and the sheriff hereby appointed shall account to the sheriff whom he succeeds for all fees collected by him, which shall be due upon the papers transferred under this act at the time of such transfer.

SEC. 4. All officers of the county of Carter, whether county or precinct, shall, on the thirteenth day of December, instant, transfer all papers, records, dockets of any name and kind pertaining to their offices respectively, to their successors in office, and all actions or other proceedings, special or otherwise, shall continue before and be disposed of by the successors to the several officers hereby appointed.

SEC. 5. This act shall take effect and be in force from and after the thirteenth day of December instant.

LARAMIE COUNTY.

CHAPTER 36.

AN ACT TO PROVIDE COUNTY OFFICERS FOR THE COUNTY OF LARAMIE, TO ESTABLISH THE COUNTY SEAT OF SAID COUNTY, AND FOR OTHER PURPOSES.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SEC. 1. That until the first general election, to be held in this territory on the second Tuesday in September, A. D. one thousand eight hundred and seventy, and until their successors are elected and qualified. The following named persons are hereby declared to be the county officers of Laramie county as hereinafter stated, viz: County commissioners—L. Murrin, H. J. Rogers and George D. Foglesong; sheriff—T. Jeff. Carr; judge of probate—

William L. Kuykendall; county clerk and ex-officio register of deeds—John T. Chaffin; coroner—C. C. Furley, M. D.; surveyor—S. H. Winsor; county attorney—H. Garbanati; county superintendent of public schools—Reverend H. P. Peck; justices of the peace—Pine Bluffs, D. C. Tracy; Cheyenne, Wm. Baker; Fort Laramie, Frank Gates; constables—Pine Bluffs, William Rowland; Cheyenne, A. J. Mead; Fort Laramie, Gibson Clark.

County seat.

SEC. 2. The county seat of said county is hereby located at the city of Cheyenne.

Sheriff to turn over tax roll, &c.

SEC. 3. Nothing in this act contained shall be so construed as to require the present sheriff of said county, to turn over to his successor in office any papers in his hands as such sheriff and collector of Laramie county; but all such papers shall be by said sheriff retained and served, or executed and returned to the court or judge from whence and by whom they were issued, according to law; and said sheriff as such collector shall return the tax roll to the board of county commissioners of said county, on or before the thirteenth day of December, A. D. one thousand eight hundred and sixty-nine, and at the same time make a full settlement with said board, and pay over to the county treasurer all moneys collected by him for and on account of the territory or county or any public fund therein.

Duties of commissioners.

SEC. 4. It shall be the duty of the board of county commissioners of said county after receiving the tax roll from said sheriff, as provided in the last preceding section of this act, to cause to be entered on said roll, a statement of all taxes, of every kind and description, which have been collected thereon by the present Sheriff, and to turn over to the sheriff hereby appointed, said tax roll, who is hereby authorized to proceed and collect the unpaid taxes thereon according to law.

Acts repealed.

SEC. 5. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 6. This act shall take effect and be in force from and after the thirteenth day of December, A. D., one thousand eight hundred and sixty-nine.

CARBON COUNTY.

CHAPTER 37.

AN ACT TO ORGANIZE THE COUNTY OF CARBON AND TO ESTABLISH THE
BOUNDARY LINES THEREOF, AND FOR THE APPOINTMENT
OF OFFICERS THEREIN.

*Be it enacted by the Council and House of Representatives
of the Territory of Wyoming:*

SEC. 1. That all that portion of Wyoming territory described as follows, be and is hereby organized into a county by the name of Carbon, to-wit: Commencing at a point one-half mile east of Como station, on the Union Pacific railroad, and running thence due north to the forty-fifth parallel of north latitude; thence west along said parallel to the one hundred and seventh degree and thirty minutes west longitude; thence south along the eastern boundary of Carter county, (namely:) the one hundred and seventh degree and thirty minutes west longitude, to the forty-second [forty-first] parallel of north latitude; thence east along said parallel to a point due south of the point of beginning; thence north to the place of beginning; and the following officers are hereby appointed for said county, to act until the next ensuing general election, and until their successors are duly elected and qualified, to-wit: county commissioners—A. B. Donnelly, E. V. Upton and Robert Foot; sheriff—George Doyle; justice of the peace—Robert Foot, of Fort Halleck precinct and, ——— Hinton, of Carbon precinct; probate judge and *ex-officio* justice of the peace, William R. Hunter, of Rawlins Springs; county clerk and register of deeds—Thomas J. Williams: superintendent of public instruction—H. C. Hall.

Boundaries.

Officers.

Who fill vacan-
cies.

SEC. 2. The county commissioners may appoint officers to fill the various county offices existing under the general laws which are not otherwise provided by law, and fill all vacancies; and the persons so appointed shall hold their respective offices until the next ensuing general election, and until their successors are duly elected and qualified.

County seat.

SEC. 3. The county seat of said county is hereby located at Rawlin's Springs until removed therefrom according to law.

SEC. 4. This act shall take effect and be in force from and after the first day of January, A. D., eighteen hundred and seventy.

ALBANY COUNTY.

CHAPTER 38.

AN ACT TO ESTABLISH THE BOUNDARY LINES OF ALBANY COUNTY, AND FOR THE APPOINTMENT OF OFFICERS THEREIN.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

Boundaries.

SEC. 1. That all that portion of Wyoming territory embraced within the following described boundaries, shall be known as Albany county: Commencing at Bufort station on the Union Pacific railroad, thence due north to the forty-fifth parallel of north latitude, thence west along said parallel to the eastern line of Carbon county, thence south along said eastern boundary line of Carbon county to the forty-first degree of north latitude, thence east along said forty-first parallel of latitude to a point due south of Bufort station, and thence north to the point of beginning. The following officers are hereby appointed for said county, to act until the next ensuing election, and until their successors are duly elected and qualified: County commissioners, H. Wagner, Joseph Mackle, S. C. Leach; sheriff, J. W. Conner; probate judge, L. D. Pease; assessor, Charles Hilliker; justice of the peace, George Van Dyke, of Sherman; county clerk, R. S. Kinney; constables, John Barton, D. Shanks,

Officers.

William Carr, George Young; coroner, Dr. Foose; county superintendent of public instruction, _____; surveyor, James Vine; prosecuting attorney, S. W. Downey.

SEC. 2. The county commissioners may appoint officers to fill the various county offices existing under the general laws which are not otherwise provided by law, and fill all vacancies, and the persons so appointed shall hold their respective offices until the next ensuing general election, and until their successors are duly elected and qualified.

SEC. 3. The county seat of said county is hereby located at the town of Laramie, until removed therefrom according to law.

SEC. 4. This act shall take effect and be in force from and after the second Monday in December, 1869.

JUDICIAL DISTRICTS.

CHAPTER 39.

AN ACT ESTABLISHING THE JUDICIAL DISTRICTS WITHIN THE TERRITORY OF WYOMING, AND TO PROVIDE FOR THE HOLDING OF COURTS THEREIN.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SEC. 1. That the territory of Wyoming is hereby divided into three judicial districts. The counties of Laramie and Albany, as they now are, or may hereafter be bounded or organized, shall compose the first judicial district. The counties of Carbon and Uinta, as they now are, or may hereafter be bounded, organized or named, shall compose the second judicial district. The county of Carter, as it now is, or may be hereafter organized or named, shall compose the third judicial district.

SEC. 2. The Hon. John H. Howe, Chief Justice of the supreme court of the territory, is hereby assigned to the first judicial district, and shall hold terms of court in the counties thereof, at the times and places as provided by law.

Second district

SEC. 3. The Hon. John W. Kingman, associate justice of the supreme court, is hereby assigned to the second judicial district, and shall hold terms of the district court in the counties thereof, at such times and places as shall be provided by law.

Third district.

SEC. 4. The Hon. Wm. T. Jones, associate justice of the supreme court, is hereby assigned to the third judicial district, and shall hold terms of the district court in said county, as shall be provided by law.

Terms, when
and where held.

SEC. 5. There shall be held during each year in the second and third judicial districts at the county seats of the several counties therein, as they now are or may hereafter be established, two general terms of court, commencing on the days following in each and every year; that is to say: In the second judicial district, in the county of Carbon, on the first Monday of December and May. In the county of Uinta on the first Monday of January and fourth Monday of July. In the county of Carter, on the first Monday of June and October. There shall be held during each year in the first judicial district at the county seats of the counties therein, general terms of the district court as follows: At the county seat of Laramie county on the third Monday of March, and third Monday of July and November. In the county of Albany at the county seat thereof on the first Monday of March and September.

United States
cases.

SEC. 6. The terms of court for transacting business arising in the first judicial district, under the constitution and laws of the United States, shall be held alternately at the county seats of Laramie and Albany counties; the first term thereof to be held at such place as the chief justice shall designate.

Ditto.

SEC. 7. The terms of the court for transacting business arising in the second judicial district under the constitution and laws of the United States, shall be held alternately at the county seats of Carbon and Uinta counties, the first term thereof to be held at the county seat of Uinta county.

Ordered terms.

SEC. 8. It shall be competent for the district court, at any regular term thereof, upon its own motion, or any judge

thereof in vacation, upon the written request of a majority of the board of county commissioners of the proper county, to order a special jury term of the district court, by giving thirty days notice in some newspaper published in the county, if there shall be one, if not one, some paper having a general circulation in such county, and where such notice shall be given in pursuance of this act, the court shall have the same powers as the court at a general term.

SEC. 9. There shall be held on the first Monday of every recurring December, March, June and September in each year, a special term in the third judicial district, to be known as "law terms," at which terms the several district courts shall have the same jurisdiction and powers of the court at a general term, except it shall have no jury, either grand or petit. Law terms.

SEC. 10. Whenever a special term shall occur the same week of a general or ordered term provided for in this act, the "law term" shall be merged in such term. Law term merged.

SEC. 11. Whenever it shall happen that either of the justices of the supreme court of this territory shall be unable, by reason of sickness or absence from the territory, to hold any general term, or any term ordered by any court or judge thereof provided for in this act, it shall be lawful for the governor to assign any other justice of the supreme court specially to hold said term; and all proceedings, orders, judgments and decrees had, made and pronounced, at the term so held by the justice so specially assigned, shall have the same force and validity as if the said court were held by the justice assigned generally to said district. Justice assigned.

SEC. 12. Whenever it shall happen that any justice of the supreme court shall fail to reach the place appointed for holding any term of the district court by two o'clock in the afternoon of that day, it shall be lawful for the clerk of said court to adjourn said court from day to day for three days, and on the third day at two o'clock in the afternoon to adjourn the term, unless he shall have reasonable ground to believe that by further adjournment not later than the following Monday, the justice assigned to hold said term will Adjournment.

be present, in which case the said clerk shall enter such continuance in the records of the court, and all jurors, witnesses, and recognized persons in attendance, or who should have been in attendance, shall take notice of all adjournments, and in no wise be released from any liability that any witness, juror or recognized person may be under at the time of such adjournment, and all proceedings, actions, motions and orders shall be deemed adjourned like the court, from day to day or for the term, and no adjournment shall work a discharge or release of any recognized person.

Deputy clerks.

SEC. 13. The clerk of the district court in each district in which there are two or more counties, shall appoint a deputy in each county in his district wherein a court by law is required to be held, the judge of the district court approving such appointment, and every such deputy shall have power to execute the duties of the clerk within the county for which he is appointed, but all official acts shall be in the name of the clerk by the appointee as deputy, and the clerk shall be liable for all the acts of such deputy done by color of his appointment.

*Suits, &c., where
pending*

SEC. 14. All suits, actions, causes and proceedings, civil and criminal, now pending in the district court of any of the counties of this territory, respectively, shall be deemed and held to be pending in the district courts of said counties respectively, the same as though this act had not been passed.

SEC. 15. This act shall take effect and be in force from and after its passage.

ALIENATION.

CHAPTER 40.

AN ACT CONCERNING ALIENATION BY DEED, OF THE PROOF AND RECORDING OF CONVEYANCES AND THE CANCELLING OF MORTGAGES.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SEC. 1. Conveyances of lands or of any estate or interest therein, may be made by deed signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded as directed in this chapter, without any other act or ceremony whatever. Conveyances, who may make.

SEC. 2. A husband and wife may, by their joint deed or mortgage, convey the real estate of the wife in like manner, as she might do by her separate deed or mortgage if she were unmarried. Husband and wife.

SEC. 3. A deed of quit claim and release shall be sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale. Quit claim.

SEC. 4. A conveyance made by a tenant for life or years, purporting to grant a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey. Tenant for life or years.

SEC. 5. No covenant shall be implied in any conveyance of real estate, whether such conveyance contains special covenants or not. No covenant implied.

SEC. 6. No mortgage shall be construed as implying a covenant for the payment of the sum thereby intended to be No express covenant.

secured, and where there shall be no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment, shall be given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

No grant void. SEC. 7. No grant or conveyance of lands or interest therein shall be void, for the reason that at the time of the execution thereof, such land shall be in the actual possession of another claiming adversely.

No witnesses. SEC. 8. Deeds or mortgages, executed within this territory, of lands or any interest in lands, shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such, and the person executing such deeds or mortgages, may acknowledge the execution thereof before any judge or commissioner of a court of record, or before any notary public or justice of the peace within the territory, and the officer taking such acknowledgment, shall indorse thereon a certificate of the acknowledgment thereof, and the true date of making the same, under his hand, and seal of office if there be one.

When executed in other states. SEC. 9. If any such deed or mortgage shall be executed in any other state, territory or district of the United States, such deed or mortgage may be executed according to the laws of such state, territory or district, by any officer authorized by the laws of such state, territory or district, to take the acknowledgment of deeds or mortgages therein, or before any commissioner appointed by the governor of this territory for such purposes.

Certificate. SEC. 10. In the cases provided for in the last preceding section, unless the acknowledgment be taken before a commissioner appointed by the governor of this territory for that purpose, such deed or mortgage shall have attached thereto a certificate of the clerk, or other proper certifying officer of the court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is therein represented to be, that he knows the signature

of such person subscribed thereto to be genuine, and that the deed or mortgage is executed and acknowledged according to the laws of such state, territory or district.

SEC. 11. When any married woman not residing in this territory, shall join with her husband in any conveyance of real estate situated within this territory, the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution of such conveyance by her, may be the same as if she were sole.

Married woman
non-resident.

SEC. 12. A certificate of the acknowledgment of any deed or mortgage, or of the proof of the execution thereof, before a court of record or justice of the peace, signed by the clerk of such court (or by the justice,) before whom the same was taken, as provided in this title, and in the cases where the same is necessary, the certificate required by the tenth section of this title, shall entitle such deed or mortgage certificate or certificates aforesaid, to be recorded in the office of the register of deeds of the county where the land lies.

Certificate.

SEC. 13. Every conveyance of real estate within this territory hereafter made, which shall not be recorded as provided by law, shall be void, as against any subsequent purchaser in good faith and for a valuable consideration, of the same real estate or any portion thereof, whose conveyance shall be first duly recorded.

Conveyance not
recorded.

SEC. 14. Deeds or mortgages of pews and slips in any church, may be recorded by the register of deeds of the county in which such church is situated, or by the clerk of the society, or proprietors, if incorporated or legally organized, and such clerk shall receive the same fees as the register of deeds is entitled to for similar services.

Pews and slips.

SEC. 15. All conveyances and other instruments authorized by law to be recorded, and which shall be acknowledged or proved, as provided in this title, and if the same shall have been recorded, the record or a transcript of the record, certified by the register, may be read as evidence in any court within this territory without further proof

Record to be
evidence.

thereof, but the effect of such evidence may be rebutted by other competent testimony.

Absolute conveyance.

SEC. 16. When a deed or mortgage purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance, or other instrument for that purpose, the original conveyance shall not be thereby defeated or effected as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the office of the register of deeds of the county where the lands lie.

Recording assignment.

SEC. 17. The recording of the assignment of a mortgage shall not in itself, be deemed notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them or either of them to the mortgagee.

Term "purchaser."

SEC. 18. The term "purchaser," as used in this title, shall be construed to embrace every person to whom any estate or interest in real estate shall be conveyed for a valuable consideration, and also every assignee of a mortgage or lease, or other conditional estate.

Term "conveyance."

SEC. 19. The term conveyance, as used in this title, shall be construed to embrace every instrument in writing by which any estate or interest in real estate is created, aliened, mortgaged or assigned, or by which the title to any real estate may be effected in law or equity, except wills, leases for a term not exceeding three years, and executing contracts for the sale or purchase of lands.

Letter of attorney.

SEC. 20. The preceding section shall not be construed to extend to a letter of attorney, or other instrument, containing a power to convey lands as agent or attorney for the owner of such lands, but every such letter or instrument and every executory contract for the sale or purchase of lands, when acknowledged or proved in the manner prescribed in this chapter, may be recorded by the register of deeds of any county in which the lands to which such persons or contract relates may be situated, and where so

acknowledged or approved, and the record thereof when recorded, or a transcript of such record duly certified, may be read in evidence in the same manner and with like effect as a conveyance recorded in such county.

SEC. 21. No letter of attorney or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed, unless the instrument containing such revocation be also recorded in the same office in which the instrument containing the power was recorded. Not revoked.

SEC. 22. A scroll or device used as a seal upon any deed of conveyance or other instrument whatever, whether intended to be recorded or not, shall have the same force and effect as a seal attached thereto, or impressed thereon; but this section shall not be construed to apply to such official seals, as are or may be provided by law. Scroll or device.

SEC. 23. All conveyances of real estate heretofore made and acknowledged, or proved in accordance with the laws of this territory, in force at the time of such making, and acknowledgment or proof, shall have the same force as evidence, and be recorded in the same manner and with the like effect as conveyances executed and acknowledged in pursuance of this title. Conveyances heretofore made

SEC. 24. Any mortgage that has been, or hereafter may be recorded, may be discharged by an entry in the margin of the record thereof, signed by the mortgagee or his personal representative, or assignee acknowledging the satisfaction of the mortgage in the presence of the register of deeds or his deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release, duly acknowledged and recorded. Discharge.

SEC. 25. Any mortgage shall be discharged upon the record thereof, by the register of deeds in whose custody it shall be whenever there shall be presented to him a certificate executed by the mortgagee, his personal representatives or assigns, acknowledged or proved, and certified as herein before prescribed, to entitle conveyances to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged. Record of register of deeds.

Recorded at
Full length.

SEC. 26. Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book and page, containing such record in the minute, in the discharge of such mortgage made by the register upon the record thereof.

Mortgagee lia-
ble to mortgagor.

SEC. 27. If any mortgagee or his personal representative, or assignee, as the case may be, after a full performance of the condition of the mortgage, whether before or after the breach thereof, shall, for the space of seven days, after being thereto requested, and after tender of his reasonable charges, refuses or neglects to discharge the same as provided in this title, or to execute and acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgagor, his heirs, or assigns, in the sum of one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal to be recovered in a civil action.

SEC. 28. This act shall take effect from and after its passage, and approval by the governor.

Approved, December 10, 1869.

DISTRIBUTION.

CHAPTER 41.

AN ACT REGULATING DESCENT AND DISTRIBUTION OF PROPERTY.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

Parcenary dis-
tribution.

SEC. 1. That whenever any person having title to any real estate or property, having the nature or legal character of real estate or personal estate undisposed or otherwise limited by marriage settlement, shall die intestate as to such estate, it shall descend and be distributed in parcenary to his kindred, male and female, subject to the payment of his debts in the following course and manner, namely: If such

Intestate leave a husband or wife and children, or the descendants of any children, him or her surviving, one half of such estate shall descend to such surviving husband or wife, and the residue thereof to such surviving children and descendants of children, as hereinafter limited; if such intestate leave a husband or wife and no child nor descendants of any child, then the real and personal estate of such intestate shall descend as follows. to wit: Three-fourths thereof to such surviving husband or wife, and one-fourth thereof to the father and mother of the intestate, or the survivor of them. *Provided*, That if the estate of such intestate, real and personal personal does not exceed in value the sum of ten thousand dollars, then the whole thereof shall descend to and rest in the surviving husband or wife as his or her absolute estate, subject to the payment of debts as aforesaid. Dower and the tenancy by the courtesy are abolished, and neither husband nor wife shall have any share in the estate of the other save as herein provided. Except in cases above enumerated, the estate of any intestate shall descend and be distributed as follows:

Provided.

Dower abolished.

First, To his children surviving, and the descendants of his children who are dead, (the descendants collectively, taking the share which their parent would have taken if living.

First, to children.

Second, If there be no children nor their descendants, then to his father, mother, brothers and sisters, and to the descendants of brothers and sisters who are dead, the descendants collectively taking the share their parent would have taken if living,) in equal parts.

Second, to father, &c.

Third, If there be no children nor their descendants, nor father, mother, brothers, sisters nor descendants of deceased brothers or sisters, nor husband nor wife living, then to the grandfather, grandmother, uncles, aunts and their descendants, (the descendants taking collectively, the share of their immediate ancestors) in equal parts.

Third, collateral relatives.

SEC. 2. All posthumous children or descendants of the intestate shall inherit in like manner as if born in the lifetime of the intestate; but no right of inheritance shall

Posthumous children.

accrue to any person other than the children or descendants of the intestate, unless they are in being, and capable in law of taking as heirs at the time of the intestate's death.

Half-blood.

SEC. 3. Children, and descendants of children of the half-blood, shall inherit the same as children and descendants of the whole blood, but collateral relations of the half-blood shall inherit only half the measure of collateral relatives of the whole blood, if there be any of the last named class living.

Advancement.

SEC. 4. Where any of the children of the intestate shall have received in his lifetime, any real or personal estate, by way of advancement, and the other heirs desire it to be charged to him, the probate judge shall cite the parties to appear before him, shall hear proof upon the subject, and shall determine the amount of such advancement or advancements to be thus charged.

Maintenance,
&c.

SEC. 5. The maintenance, education or supply of money to a child under the age of majority, without any view to apportion or settlement in life, shall not be deemed an advancement under section four of this title.

Alienage.

SEC. 6. The alienage of the descendants shall not invalidate any title to real estate which shall descend from him or her.

Illegitimacy.

SEC. 7. Illegitimate children shall inherit the same as those born in wedlock, if the parents subsequently intermarry, and such children be recognized after such intermarriage by the father, to his illegitimate children, inherit from the mother, and the mother from the children.

Divorces.

SEC. 8. Divorces of husband and wife shall not effect the right of children personally together, to inherit their property.

Who to appor-
tion.

SEC. 9. Probate judges and administrators of the estate of persons dying intestate within this territory, shall apportion and distribute estates of intestates according to this act.

Rule of descent.

SEC. 10. The rule of descent of all property of whatsoever kind or nature, real and personal, of any bastard or illegitimate person, dying intestate in this territory and

leaving property and effects therein, shall be as follows, to wit: On the death of any such person intestate, his or her property, estate and effects, shall descend to and vest in the widow or surviving husband and children, as the property and effects of other persons in like cases. In case of the death of any such illegitimate person leaving no children or descendants of a child or children, then the whole property and estate, rights, credits, and effects shall descend to and vest in the widow or surviving husband. In case of any such illegitimate person, leaving no widow, surviving husband or descendants, then the property and estate of such person shall descend to and vest in the mother and her children and their descendants; to the mother one half, and the other half to be equally divided between her children and their descendants, the descendants of a child taking the share of their deceased parent or ancestors. In case of the death of any such illegitimate person leaving no heirs as above provided, then the property and effects of whatsoever kind or nature, shall pass to and vest in the next of kin to the mother of such illegitimate person, in the same manner as the estate of a legitimate person, would, by law, pass to the next of kin.

SEC. 11. If any decedent leaves a widow residing in this territory, in all cases she shall be allowed to have and retain as her sole and separate property, one bed and bedding, wearing apparel of herself and family, two cows, her saddle and bridle, one horse, household furniture for herself and family, and also the same amount and species of property, real and personal, as is or may be by law exempt from execution. Said property shall be retained by the widow, and set apart to her by the executor or administrator, and shall, in no case be subject to the payment of debts of the deceased.

Widow, allowed absolute property.

SEC. 12. When an inventory shall have been made of the personal estate of any testator or intestate, the widow may relinquish her right to any or all of the specified articles of property allowed to her by the preceding section, or in case the intestate shall not leave any or all of the

Widow may relinquish.

Value set apart
in money.

articles specified, in either case she shall be entitled to other property or the value of the same in money, and it shall be the duty of the administrator or court of probate to allow the value of the articles specified by law to be set apart to the widow of any intestate, to be allowed her in money, or other personal property at her election.

Right of widow
not affected.

SEC. 13. The right of a widow to her separate property shall, in no case be effected by her renouncing or failing to renounce the benefit of the provisions made for her in the will of her husband or otherwise.

Approved, December 10, 1869.

COMPENSATION.

CHAPTER 42.

AN ACT FIXING THE COMPENSATION OF MEMBERS, CLERKS, AND OTHER
OFFICERS OF THE LEGISLATIVE ASSEMBLY OF THE
TERRITORY OF WYOMING.

*Be it enacted by the Council and House of Representatives
of the Territory of Wyoming :*

Members of
Council, House,
&c., shall receive

SEC. 1. That members of the council and house of representatives of Wyoming territory, shall receive, in addition to the per diem paid by the general government, the sum of six dollars each per day, and the speaker and president of the house and council twelve dollars each per day, for their services in attendance on the present session of the said council and house of representatives, which convened on the twelfth day of October, A. D., 1869, at Cheyenne, Wyoming territory.

The Auditor is
directed.

SEC. 2. The auditor of the territory is hereby directed and authorized to draw a warrant on the territorial treasurer in favor of each member of the said council and house of representatives, in payment of the additional amount as above specified, on presentation to him by such member of a certifi-

icate signed by the speaker of the house or president of the council for members of their respective houses, and by the clerk of the house or secretary of the council for the speaker and president respectively, certifying that the holder thereof was a member of such body, and was in actual attendance on the duties of the same: and upon the presentation of such warrant to the territorial treasurer he shall pay the same out of any funds in the treasury not otherwise appropriated.

SEC. 3. That there shall be allowed the clerks of the house of representatives, compensation for services rendered at this session as follows, to wit: To the engrossing and enrolling clerks, each the sum of ten dollars per day. The chief clerk shall be allowed the sum of seven dollars per day, and the assistant clerk the sum of seven dollars per day, the sergeant at arms the sum of five dollars per day, the foreman the sum of four dollars per day, the messenger the sum of four dollars per day, the page the sum of three dollars per day, the chaplain the sum of three dollars per day, and for the pay of two extra clerks for the judiciary committee, C. E. Wilson and J. T. Chaffin, the sum of eight hundred dollars, being four hundred dollars each, and for the pay of John Adams, for service rendered as clerk to judiciary committee, three hundred and twenty dollars.

Allowed to
clerks.

SEC. 4. The enrolling and engrossing clerks of the council shall receive the sum of ten dollars each per day, the chief secretary of the council shall be allowed the sum of seven dollars per day, the assistant secretary the sum of seven dollars per day, and sergeant at arms the sum of five dollars per day, the page of the council the sum of three dollars per day, the messenger shall receive the sum of four dollars per day, and the foreman the sum of four dollars per day, the chaplain the sum of three dollars per day.

Ditto.

SEC. 5. The certificate of the president of the council countersigned by the secretary of the council, or the speaker of the house countersigned by the chief clerk of the house, shall be sufficient authority for the auditor of the territory to draw warrants for the several amounts so certified to upon the

Certificate, &c.

territorial treasurer, which shall be paid out of any funds in the territorial treasury not otherwise appropriated, and the several officers respectively shall be paid for the term they were actually engaged in the service of the council or house of representatives as the case may be, and the certificate aforesaid shall specify the number of days which the person receiving the same is entitled to pay, for such session.

SEC. 6. This act to take effect and be in force from and after its passage.

MINERS' LIENS.

CHAPTER 43.

AN ACT GIVING LIENS TO MINERS AND OTHER LABORERS IN MINES, COAL BANKS, AND UPON OIL LAND.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming :

Lien for labor.

SEC. 1. That every miner or other person, who, at the request of the owner of any ledge or lode of quartz bearing gold, silver, cinnabar or copper, or of any coal bank or mine, shall work in or upon such mine or bank, shall have a lien upon such vein or lode, mine or bank, to the amount due at any time when a demand shall be made upon such owner, or his or their agent for money due for such labor, and payment shall be refused.

Lien for materials.

SEC. 2. That any person who shall labor as a mechanic, or otherwise, or who shall furnish timber, lumber, rope, nails, or any other material for timbering shafts [or] levels for the mine, or who shall furnish any kind of materials for erecting windlass, whim, or other hoisting apparatus upon any vein, mine or coal bank, referred to in the first section, shall also have a lien upon the mine or coal bank for which he furnished such materials, or upon which he performed such labor.

How to proceed.

SEC. 3. The party seeking a lien shall proceed so far as the proceedings are applicable in the same manner, to

enforce a lien as by law required in the case of mechanics and other persons seeking to enforce a lien upon dwelling houses and other buildings, except when other provisions are made by this Act.

SEC. 4. When any sum exceeding ten dollars for labor performed by any miner or other person upon or in any mine or coal bank specified in section one of this Act, shall be due and unpaid for ten days, it shall be competent for the person or persons to whom such sum of money shall be due, to file a notice in the office of county recorder in the county where such mine is situated, at any time within thirty days after the last day upon which work was done by him; which said notice shall in substance set forth the fact that the party performed labor (naming the kind,) for a party or company, (naming the party or company,) that such labor was performed under a contract (stating the substance;) also, the time when the party commenced and when he ceased to work, the amount still due and unpaid, together with a description of the mine or coal bank upon which such work was performed, which statement shall be verified by the affidavit of the party so filing it, and when filed the county recorder shall record the same in a "lien book," the same as required in the case of mechanics' notices of liens.

Notice of lien.
when filed.

Substance of
notice.

SEC. 5. The provisions of the next preceding section shall apply to persons who shall furnish materials or work upon any shaft, whim or other hoisting works, who, by complying with the general provisions of such section, shall have a like lien.

Provisions, to
whom apply.

SEC. 6. When notices as provided in the next two preceding sections shall be filed, the lien shall hold not only against the owner of the mine or bank from the time when the miner or other person began work, but against all persons or company who shall have purchased such mine or coal bank while such miner or other person was employed therein, or furnished materials used therein or thereon.

Against whom
liens hold.

SEC. 7. Suit to enforce such lien may be commenced at any time within one year after filing such notice.

Suit, when
commenced.

SEC. 8. Any owner of any oil well or spring who shall

oil wells.

employ any person to perform any work of any kind around or about any oil well or spring, either in building derricks, buildings or any kind of machinery, or in boring or drilling, shall be deemed within the provisions of this Act; and all persons performing labor or furnishing materials, shall have like liens upon oil territory upon which he labored or for which he furnished materials or the improvements thereon, as miners or other laborers upon or in mines as provided in this Act, and shall proceed in the same manner to enforce a lien.

SEC. 9. This act shall take effect and be in force from and after its passage.

Approved, December 2d, 1869.

MECHANICS' LIENS.

CHAPTER 44.

AN ACT GIVING LIENS TO MECHANICS, ARTIZANS, AND OTHER PERSONS UPON PERSONAL PROPERTY IN CERTAIN CASES.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

Who entitled
to lien.

SEC. 1. That any mechanic, artizan, or other person who shall make, alter, repair or bestow labor upon any article of personal property, at the request of the owner or party having possession thereof, or who shall furnish materials from which the same is made or repaired, shall have a lien upon all such articles of personal property for his reasonable charges for the labor performed, or materials furnished and used in such making, alteration, repair, or improvement.

If charges not
filed in thirty
days.

SEC. 2. If any such charges for which a lien is given by the preceding section, be not filed within thirty days after the same becomes due, and payable, the mechanic or other person to whom such lien is given, may apply to any justice of the peace of the county wherein he resides, to appoint appraisers to appraise the several articles of personal

property, when such lien is claimed. Such justice shall thereupon appoint by warrant, under his hand and seal, the appraisers being responsible householders of the county not interested in the matter, to appraise such personal property.

SEC. 3. The appraisers so appointed, shall be sworn by the justice to well and faithfully appraise and value all such personal property, and shall thereupon proceed to view and appraise the same, and shall return appraisement, wherein shall be set down each article separately, to the justice, by whom they were appointed, within ten days after their appointment.

Appraisers
sworn.

SEC. 4. After such appraisement is made, the person to whom such lien is given by the foregoing sections, shall give ten days prior notice of the time, place, and terms of sale, together with a description of the property to be sold. Such notice shall be personally served upon the owner, or the person from whose possession such property was received, if such owner or person reside within the County; if not, by publication in some newspaper published in the county wherein the person attempting to enforce his lien resides, (or if there be no such newspaper, then by posting in three public places within such county for at least four weeks,) and shall transmit by mail to the owner at his usual place of abode if known, a copy of such notice, the notice being personally served, or the service being complete after four weeks, the party claiming a lien may proceed to sell all such personal property, or as much thereof as may be necessary to pay his claim, at public auction for cash in hand, at any public place within such county named in such notice, between the hours of ten A. M. and four P. M. of the day appointed; and from the proceeds may pay the reasonable costs of such appraisement, notice, and sale, and his reasonable charges for which he hath his lien. The residue of the property unsold he shall surrender unto the owner.

Ten days notice.

Personally
served.

Publication.

SEC. 5. No such sale shall be made for less than two-thirds of the appraised value of the article sold, nor except upon due notice as required by the preceding section.

Sale for not less
than two-thirds.

Every such sale made in violation of the provisions of this section shall be absolutely void.

Holder of lien
may purchase.

SEC. 6. At any such sale the person to whom such lien is given may become the purchaser.

Sale continued
from day to day.

SEC. 7. In any case where the property to be sold cannot conveniently be sold in one day, the sale may be continued from day to day by public outcry at the place of sale. Upon the completion of such sales the person to whom the lien is given hereby, shall cause a bill of sale thereof to be filed with the justice of the peace before whom the appraisement was had, in which shall be set down the sum for which each separate article of property was sold and the name of the purchaser. The justice shall record such bill of sale in his docket, and preserve the original thereof, together with the appraisement.

When right of
action not taken
away.

SEC. 8. Nothing herein contained shall be so construed as to take away the right of action of the party to whom such lien is given for his charges, or for any residue thereof after sale of such property.

Clerk and crier.

SEC. 9. At any such sale, the person to whom such lien is given as herein provided, may appoint a clerk and crier.

Fees.

SEC. 10. Appraisers appointed under the provisions of this act shall receive three dollars per day; justices of the peace shall receive for each warrant of appraisement twenty cents per one hundred words, and the like fees for recording each bill of sale. Clerks and criers at sales made under the provisions hereof, shall receive each three dollars per day.

SEC. 11. The act shall take effect and be in force from and after its passage.

Approved, December 10, 1869.

OFFICIAL YEAR.

CHAPTER 45.

AN ACT DEFINING THE OFFICIAL YEAR OF COUNTY AND PRECINCT OFFICERS
AND FOR OTHER PURPOSES.

*Be it enacted by the Council and House of Representatives
of the Territory of Wyoming :*

SEC. 1. That the official year of all county and precinct officers shall hereafter terminate upon the last day of October of each and every second year ; *Provided*, That all county and precinct officers now acting as such, whether by appointment of the legislative assembly of Dakota territory, by county board of commissioners, or otherwise, shall expire on the eleventh day of December instant, and all records, books, dockets, papers, office furniture and every other matter or thing pertaining to the several county or precinct officers, shall be, upon demand, on and after the thirteenth day of December instant, transferred to and delivered up to the successor or successors to such officer or officers.

Official year,
when to terminate.

SEC. 2. The official year of all county and precinct officers shall hereafter commence on the first day of November every second year, except as otherwise provided by law.

When commence.

SEC. 3. All persons appointed to any county or precinct office by the present legislative assembly, shall qualify according to law, on the thirteenth day of December instant, or as soon thereafter as they shall severally be notified of their appointment to office, and shall hold their said offices respectively until the next election as provided by law.

When qualify.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved, December 10, 1869.

CARBON COUNTY.

CHAPTER 46.

AN ACT LEGALIZING THE ASSESSMENT, THE EQUALIZATION, AND THE LEVY OF TAXES FOR, AND IN THE COUNTY OF CARBON, IN THE YEAR EIGHTEEN HUNDRED AND SIXTY NINE.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

Assessment declared legal.

SEC. 1. That the assessment of taxes in and for the county of Carbon, in the year eighteen hundred and sixty nine, the equalization of the said taxes in said year, and the levy of the same is hereby declared legal.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved, December 8, 1869.

LARAMIE COUNTY.

CHAPTER 47.

AN ACT TO LEGALIZE THE ASSESSMENT AND LEVY OF TAXES FOR THE YEAR 1869, IN LARAMIE COUNTY.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

Levy declared legal.

SEC. 1. That the levy of taxes aggregating eleven mills on the dollar, made by the board of county commissioners of Laramie county, which was made on the 19th day of May, A. D., 1869, for the year 1869, as evidenced by the records of said board of commissioners, is hereby declared to be

legal, and the said taxes shall be collected and paid to all intents and purposes, in the manner provided by law, the same as if no irregularity of any kind had occurred in the assessment or levy thereof, or in the equalization of the same.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved December 2, 1869.

CARTER COUNTY.

CHAPTER 48.

AN ACT LEGALIZING THE ORGANIZATION OF THE COUNTY BOARD OF COUNTY COMMISSIONERS OF CARTER COUNTY.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SEC. 1. That the appointments and qualification of all the members of the board of county commissioners of the county of Carter, is hereby declared to be regular in law and binding in all matters or proceedings that shall grow out of such appointment, as well upon the said commissioners as those in whose behalf they were appointed to act, and all the acts of said board of county commissioners from the twenty-seventh day of December, 1867, to the passage of this act, shall be deemed legal and binding upon the people and property in their said county, notwithstanding any irregularity in the appointment or qualification of any member of said board, or the convening thereof, so far as the same, if regular, would not have been in contravention of law.

Appointments,
&c., declared
legal.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved December 2, 1869.

ALBANY COUNTY.

CHAPTER 49.

AN ACT TO LEGALIZE THE ASSESSMENT, EQUALIZATION AND LEVY OF TAXES
IN AND FOR THE COUNTY OF ALBANY, WYOMING TERRITORY, FOR
THE YEAR EIGHTEEN HUNDRED AND SIXTY NINE.

*Be it enacted by the Council and House of Representatives of
the Territory of Wyoming, as follows:*

Assessment,
etc., declared
legal.

SEC. 1. That the assessment, equalization and levy of taxes, made in and for the county of Albany, by the officers of said county, for the year eighteen hundred and sixty-nine, be and the same is hereby legalized, notwithstanding any irregularities that may have been made in the assessment, equalization and levy of the same.

SEC. 2. This act to take effect and be in force from and after its passage.

Approved, November 23, 1869.

CARTER COUNTY.

CHAPTER 50.

AN ACT LEGALIZING THE ASSESSMENT EQUALIZATION AND OTHER IRREGULARITIES IN LEVYING THE TAXES FOR CARTER COUNTY,
FOR THE YEAR A. D. 1869.

*Be it enacted by the Council and House of Representatives
of the Territory of Wyoming:*

Legal and binding.

SEC. 1. That the assessment and valuation of property in Carter county for the year one thousand eight hundred and sixty-nine, the equalization and levy of taxes in said

county, by the county commissioners thereof, for said year, and the extension of the time for the assessment or collection of taxes are hereby declared legal and binding upon the people and property in said county, notwithstanding any irregularities that may have intervened in any stage of assessing, levying or collecting said taxes, either in the appointment or qualification of the board of county commissioners or their acts, or the acts of assessor or collector; and the collector of taxes is hereby required to make the same return of delinquent taxes in pursuance of law as though all preceding acts of different officers had been regular, and when returned shall be binding upon the property returned, and a valid and subsisting claim against the owners thereof.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved, November 26, 1869.

CARTER COUNTY.

CHAPTER 51.

AN ACT LEGALIZING CERTAIN RECORDS IN SHOSHONE AND CALIFORNIA MINING DISTRICTS IN CARTER COUNTY, AND FOR OTHER PURPOSES.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

SEC. 1. That all the records of deeds and other instruments in writing made with the intention to convey mines, mining grounds, lots, or other property, or to create a lien thereon and the manner of the execution thereof, which deeds or other instruments have been recorded in the records of either Shoshone or California mining districts, now in the county of Carter, are hereby declared legal and binding upon all parties interested therein, notwithstanding defective acknowledgements of records of such instruments.

Records legal.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved, November 26, 1869.

CARTER COUNTY.

CHAPTER 52.

An Act Legalizing certain Acts of the Board of County Commissioners and the Treasurer of Carter county, in relation to the use of certain Moneys belonging to the School Fund.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming :

Acts to be
legal.

SEC. 1. That the acts of the board of county commissioners of Carter county during the year one thousand eight hundred and sixty-nine, in crediting the general fund of the county of Carter with certain moneys collected out of licenses, belonging to the "school fund" under the laws of Dakota, is hereby declared regular, any law to the contrary notwithstanding, and the paying over of said moneys by the county treasurer upon warrants drawn by the county commissioners upon the general fund, either by special warrant or otherwise, is hereby legalized, and the said board of county commissioners or their successors or representatives, and treasurer of Carter county or his legal representatives, are hereby authorized to plead this act in bar of any suit or proceedings which may hereafter be brought or instituted by any party, person, or body corporate or politic, in order to transfer said moneys back to the "school fund," or any prosecution in any form, instituted against any or all of their persons or parties, their successors or legal representatives, because of the using said school fund by said county commissioners and said treasurer.

This act pleaded
in bar.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved, December 10, 1869.

SALARIES OF JUDGES.

CHAPTER 53.

An Act Increasing the Salaries of the Judges of the Supreme Court.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows :

SEC. 1. That there shall be appropriated out of any moneys not otherwise appropriated the sum of three thousand five hundred dollars, as salaries of the judges of the supreme court. Salaries.

SEC. 2. There shall be paid in the manner and at the times hereinafter provided to the judges of the supreme court the sum of three thousand and five hundred dollars ; to the chief justice of the supreme court the sum of one thousand five hundred dollars, and to each of the associate justices the sum of one thousand dollars. How much to each.

SEC. 3. The first payment under the provisions of this Act shall be made upon the warrant of the auditor on the first Monday of November in the year one thousand eight hundred and seventy, and shall be one half of one year's salary, and thereafter the payments shall be quarterly ; *Provided*, that a *pro rata* amount for an absence from their duties by any of the judges of more than thirty days shall be deducted from the amount of their salary, unless such absence shall be caused by sickness of such judge. First payment.

SEC. 4. The foregoing provisions of this Act shall not be deemed to apply to the current year, but shall commence on the first day of May next. When to commence.

SEC. 5. This Act shall take effect and be in force from and after its passage.

Approved, December 10, 1869.

CONVENING OF THE LEGISLATURE.

CHAPTER 54.

AN ACT FIXING THE TIME FOR THE CONVENING OF THE COUNCIL AND HOUSE OF REPRESENTATIVES OF THE TERRITORY OF WYOMING.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

When legis-
lature shall con-
vene.

SEC. 1. That the legislature of the territory of Wyoming shall convene at the capitol of the territory, on the first Tuesday of November in the year one thousand eight hundred and seventy one, and on the first Tuesday of November every second year thereafter.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved, December 10, 1869.

COLLECTION OF TAXES.

CHAPTER 55.

AN ACT PROVIDING FOR THE COLLECTION OF TAXES HERETOFORE ASSESSED AND LEVIED IN THIS TERRITORY.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

In cases taxes
have not been
paid.

SEC. 1. In all cases in which the taxes have not been already paid, which were assessed and levied by the board of county commissioners for the year one thousand eight hundred and sixty-nine, in the several counties of Laramie, Albany, Carbon and Carter, as heretofore constituted and

bounded, the collectors of taxes of said counties in whose hands the respective warrants for the collection thereof have been delivered for collection, or their successors in office, shall severally proceed to collect the same in the manner pointed out in the act entitled "an act to provide a territorial and county revenue," passed by the legislative assembly of Wyoming territory; *Provided*, That in all cases in which the franchises, privileges, right of way, road bed, real estate, personal property, or any and all property of any corporation heretofore or now doing business within this territory, shall have been assessed or levied for the year eighteen hundred and sixty-nine, and the same has not been paid, the collector of taxes, after having made demand for the payment of the same of any agent of said corporation residing in the county in which the assessment or levy of the taxes was made, where no demand of payment has already been made, shall proceed to levy upon, seize, and take into his possession any movable or personal property of said corporation whatsoever to be found in his county, and sell and dispose of the same in the same manner and with the like effect as shall be or is now provided by law for the sale of personal property on execution.

Provided.

Collector to
seize property.

SEC. 2. The said collectors respectively are hereby authorized and empowered to levy upon, seize and take into their possession by repeated levies and seizures, any movable or personal property of such delinquent corporations, wheresoever the same may be found within their county, whether there shall be a subsisting lien of any sort upon said movable or personal property or not, and shall sell and dispose of the same in the manner and with the like effect to the purchaser or purchasers thereof, as is herein above set forth and provided. The said collectors respectively shall continue to levy upon, seize and take into their possession, the movable or personal property of such delinquent corporation from time to time until the whole amount of all the taxes levied or assessed upon such corporation, its franchises, privileges, right of way, real estate, road bed,

Property how
disposed of.

personal property, or property of any sort, shall be fully satisfied and paid, together with all costs.

Discharged
from liens.

SEC. 3. The purchaser or purchasers of said property shall hold or dispose of the same discharged from any and every lien thereon, of every kind and character; and the board of county commissioners of the respective counties wherein the property of such delinquent corporation may be sold, may, in their discretion, purchase said property, or any part thereof, at such sale, and thereafter sell and dispose of the same in such manner as they may deem proper, and shall apply the proceeds of such sale or sales to the purposes for which the levy and assessment was severally made.

No injunction.

SEC. 4. It shall not be lawful for any judge or court of this territory to grant any order of restraint or order, or writ of injunction to restrain the collection of said taxes by the sale of any property as hereinabove provided, but the officer collecting said taxes shall be liable in damages for any excessive levy to the corporation aggrieved, beyond the amount of the taxes to be collected and the costs of proceeding.

Posse comitatus.

SEC. 5. It shall be lawful for the collector seizing upon any property as is above provided, in case resistance shall be made, to summon the *posse comitatus* or power of the county, to assist him in the execution of his duty, in the same manner as sheriffs of counties as are now, or may be empowered to do in the lawful execution of any process authorized by law. Any person or persons who shall be guilty of resisting the collector in the execution of his duty in the levy or seizure of property, shall upon indictment and conviction, pay a fine not less than one hundred dollars or be imprisoned for a period not exceeding five years, or by both such fine and imprisonment, in the discretion of the court.

Taxes hereafter
levied.

SEC. 6. The provisions of this act as near as may be, shall apply to the collection of taxes hereafter assessed and levied upon the property of any corporation doing business

within this territory, except corporations organized for mining or milling purposes.

SEC. 7. This act shall take effect and be in force from and after its passage.

Approved, December 10, 1869.

LEGALIZATION.

CHAPTER 56.

An Act to Legalize the acts of Leavitt C. Barry in taking
Acknowledgments of Instruments as Deputy Notary
Public and Deputy Recorder.

*Be it enacted by the Senate and House of Representatives
of the Territory of Wyoming:*

SEC. 1. That all the acts of Leavitt C. Barry, either Acts binding.
in taking acknowledgments of, or recording instruments as
deputy notary public or deputy recorder, in what is now
Carter county, are hereby declared as binding upon all
parties in interest as though the said supposed offices of
deputy notary public or deputy recorder had existed in law,
and said Barry shall be estopped in law in any proceedings
against him growing out of his acts as deputy recorder or
deputy notary public, from setting up the non-existence of
said office.

SEC. 2. This act shall take effect and be in force from
and after its passage.

Approved, November 24, 1869.

LEGALIZATION.

CHAPTER 57.

AN ACT LEGALIZING THE ACTS OF A. G. TURNER, AND HIS DEPUTIES, AS REGISTER OF DEEDS FOR CARTER COUNTY.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows :

Acts legalized.

SEC. 1.. That all official acts of A. G. Turner, as register of deeds for Carter county or any of his deputies, are hereby legalized and declared valid in law, and all the books of records kept by the said Turner or any of his deputies, which are now in the recorder's office in said county, are declared legal and official records of the county of Carter, notwithstanding any irregularity in giving bonds by said Turner, or in not signing records made by him or his deputies, or any other irregularity ; *Provided*, That this act shall not be construed to legalize any act that would of itself have been illegal, if the officer performing the same had been regularly qualified, and performed all the acts and duties concerning the same required by law.

Provided.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved, December 3, 1869.

FENCE LAW.

CHAPTER 58.

An Act to Establish a Fence Law in Albany, Carbon and Uinta Counties.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming.

SEC. 1. A fence constructed in any of the two ^{What is a lawful fence.} following ways shall be a lawful fence:

First, By placing the ends of ordinary fence posts firmly in the ground at least twenty inches deep, and not more than twelve feet distant from each other, and by firmly fastening thereto good, sound rails or poles of sufficient size, five to the panel, the top rail or pole to be at least five feet from the surface of the ground, and the bottom rail or pole not more than ten inches from the ground.

Second, By placing posts, as provided in the first subdivision of this section, but not more than eight feet apart, and nailing or firmly fastening thereto, ordinary, sound, fencing boards, five boards to the panel, and position of top and bottom boards as provided for rails or poles in first subdivision of this section.

SEC. 2. If two or more persons join in the construction ^{Partition fence.} of a partition fence, each party shall thereafter keep in good repair his portion of such fence, and neither party shall abandon his part of such partition fence, or remove the same or any portion thereof until after one year's notice to the other party or parties interested therein, of his intention so to do unless by the consent of all parties interested therein.

Owners of
breachy animals
liable. Arbitra-
tion.

SEC. 3. Any person or persons owning or having in his or her or their possession or charge, any horses, mules, cattle or any one of such animals, which shall breach over or under, or breach into any lawful inclosure belonging to any person or persons other than the owners of such animal or animals, such person or persons owning or having in charge or possession such breaching animal or animals shall be liable to the party or parties sustaining such injury, for all damages, he, she, or they may have sustained by reason of such breaching as aforesaid, to be recovered in a civil action before any court having jurisdiction thereof or by arbitration, each party to select a property holder, and the two arbitrators to select a third, and said arbitrators, before entering upon their duties, shall be first sworn before a justice of the peace, and it shall be the duty of the arbitrators to carefully examine the fence, its condition, and assess the damage done; the arbitrators shall examine witnesses under oath, one of them to administer said oath to the witness; they shall make a written report signed by at least two of the arbitrators, to any justice of the peace in the county in which damage is sustained. The finding of the arbitration as provided for in section three, shall, within three days after the same shall have been rendered, be filed with any justice of the peace in the county where said trespass shall have been committed, who shall enter the cost upon his docket, and proceed to issue execution therein, as in other cases originally commenced before him.

Owner of in-
closure.

SEC. 4. Any person or persons occupying or having the charge of an enclosure shall be considered the owner thereof in any action, under provisions of the last section.

Owner notified.
Provide.

SEC. 5. The party sustaining the damage shall notify the owner or person having in charge such offending animals, of such damage and the probable amount thereof; *Provided*, he knows to whom such animal or animals belong, and that such owner or keeper resides within the county where the damage was committed.

Animals kept
in custody.

SEC. 6. The person suffering such damage done by animals as mentioned in section four, may restrain and keep

in custody as many of such offending animals as are equal in value to the damage done, until the finding of the court or arbitration be ascertained, unless before such suit the amount of his claim or expense of keeping such animals be tendered him.

SEC. 7. If, upon the trial of any action under the provisions of section four of this act, it shall appear by competent testimony, that the plaintiff's enclosure is a lawful fence under the provisions of this act, he shall be allowed to prove the amount of damage sustained; and (if he has retained in custody the animals committing such damage) the amount of the expense incurred for keeping such animals, and any judgment rendered for damages, costs and expenses against the defendant, shall be a lien upon the animals committing the damage. But if it shall appear upon the trial that the plaintiff's enclosure is not a lawful fence, or that no damage was sustained, judgment shall be rendered against the plaintiff, for costs of suit and damages sustained by defendant.

Fence, lawful
or not lawful.

SEC. 8. If upon the trial it appears that the defendant is not the owner, or the person in charge of such offending animals, he shall be discharged from the action with his costs, and the suit may proceed against a defendant whose name is unknown; and if at the commencement of the action, the plaintiff does not know the name of the owner, or keeper of such offending animals, he may bring suit against a defendant unknown, in which case service shall be made by posting copies of the summons in three of the most public places within the county, not less than ten days previous to the day of trial, which posting may be done by the proper officer, or by any voter of the county.

Defendant not
owner.

SEC. 9. That the fence known as a "worm fence" or a stone wall, or any fence constructed of any material shall be a lawful fence, provided such worm fence, wall, or other fence, shall be as effective for resisting breaching stock as

Worm fence, &c

the fences made in the manner prescribed by section one of this act.

SEC. 10. This act shall take effect and be in force from and after its passage.

Approved, December 10, 1869.

PREVENTION OF FIRE.

CHAPTER 59.

AN ACT TO PREVENT THE FIRING OF WOODS AND MARSHES.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

Person firing
woods, &c., fined
and imprisoned.

SEC. 1. If any person shall wilfully set on fire any woods, marshes or prairies so as thereby to occasion any damage to any other person, such person shall, upon conviction thereof, pay a sum not exceeding five hundred dollars nor less than fifty dollars, and be imprisoned in the county jail not more than three months nor less than fifteen days, and said fine shall go to the school fund of the county in which said offense is committed, and in case of the neglect or refusal of any person so convicted to pay the fine above specified, he shall be confined in the county jail one day for every three dollars thereof, until said fine be discharged.

Satisfaction to
party injured.

SEC. 2. If any person shall set on fire any woods, marshes or prairies so as thereby to occasion damage to any other person, such person shall make satisfaction for such damages to the party injured to be recovered in an action.

May fire on
his own lands.

SEC. 3. Nothing in this act shall be construed to apply to any person who may in the months of March and April set fire to the grass upon his own land, or upon public lands unclaimed or unoccupied, which fire he shall keep within proper control, and prevent it from doing injury or doing damage to the property of others.

SEC. 4. Nothing herein contained shall be so construed as to prevent any persons from firing against fire, so as to protect his or her property from being destroyed. Firing against fire.

SEC. 5. This act shall take effect and be in force from and after its passage.

Approved, November 23, 1869.

MINING RESOURCES.

CHAPTER 60.

AN ACT SUPPLEMENTAL TO AN ACT, ENTITLED "AN ACT TO PROVIDE FOR THE DEVELOPMENT OF THE MINING RESOURCES OF THE TERRITORY."

Be it enacted by the Council and House of Representatives of the Territory of Wyoming :

SEC. 1. That any person being the head of a family and a *bona fide* resident of this territory, shall be entitled to pre-empt one mining claim in the manner provided by the law to which this is a supplement, for his lawfully wedded wife (if he have one), and one claim for each male child of such parents, *Provided*, That no claim shall be located, or held by or for any such child that may be less than sixteen years of age at the time of such pre-emption or location, *Provided further*, That the manner of locating, holding and working claims as provided by this section, shall, in every particular, conform to the requirements of the mining laws of this territory. Claim for wife.
Provido.
Provido.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved, December 8, 1869.

TERRITORIAL ROAD.

CHAPTER 61.

AN ACT TO ESTABLISH A TERRITORIAL ROAD FROM SHERMAN TO THE LINE OF COLORADO TERRITORY, IN THE DIRECTION OF THE NORTH PARK GOLD MINES.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

Commissioners.

SEC. 1. That Geo. Van Dyke, John K. Gilman and W. H. Harlow be and are hereby appointed commissioners to locate and establish a territorial road from Sherman to the line of Colorado Territory, in the direction of the North Park gold mines, by the most practicable route.

When to meet.

SEC. 2. It shall be the duty of the commissioners, or a majority of them, to meet at Sherman on or before the first day of May, eighteen hundred and seventy, and proceed to locate said road.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved, December 9, 1869.

MARKS AND BRANDS.

CHAPTER 62.

AN ACT CONCERNING MARKS AND BRANDS FOR STOCK IN WYOMING TERRITORY.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

Who to have a brand.

SEC. 1. Every person having cattle, hogs, sheep, or other live stock, shall have a mark or brand, different from

the mark or brand of his neighbors, and he or she shall deliver to the county clerk a description of their mark or brand, and such clerk shall record the same in a well bound book kept by him for that purpose.

SEC. 2. No person shall have, or adopt a mark or brand previously recorded to another person of the same county, neither shall the county clerk record the same mark or brand to more than one person. Another person's brand.

SEC. 3. Every person shall mark or brand all his hogs, sheep, cattle or other stock over six months old, and if any dispute arise about the question of whose mark or brand may be, the same shall be decided by the county clerk's record. When stock to be branded.

SEC. 4. If any person shall knowingly or willingly have a mark or brand recorded which is already recorded to another person in the same county, he shall be fined not less than fifty dollars nor more than one hundred dollars. Brand already recorded.

SEC. 5. If any county clerk shall record the same mark or brand to more than one person, he shall forfeit and pay to the use of the county a fine of not less than fifty nor more than one hundred dollars. County Clerk not record same brand more than once.

SEC. 6. Every person who shall wilfully and with intent to defraud, mis-brand or mis-mark any stock not his own, shall forfeit and pay not less than fifty and not to exceed one hundred dollars, and shall be imprisoned in the county jail where said act is committed not to exceed six months, nor less than one month. Misbranding.

SEC. 7. This act shall take effect and be in force from and after its passage.

Approved, November 24, 1869.

RATE OF INTEREST.

CHAPTER 63.

AN ACT TO REGULATE THE RATE OF INTEREST ON MONEY AND OTHER EVIDENCES OF INDEBTEDNESS IN THE TERRITORY OF WYOMING.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

Any rate valid
Provided

SEC. 1. Any rate of interest which may be agreed upon between parties, for the loan or forbearance of money, goods or things in action, shall be valid; *Provided*, That if such agreement be for a higher rate of interest than twelve per cent. per annum, the same shall be in writing.

No contract.

SEC. 2. In the absence of any contract between the parties, the rate of interest upon loan or forbearance of money, goods, or things in action shall be at the rate of twelve per cent. per annum.

Interest on decrees.

SEC. 3. Interest on all judgments or decrees for money shall be at the rate of twelve per cent. per annum from the date of the rendition and signing thereof until satisfied.

Balance of account.

SEC. 4. On money due on any instrument in writing, or on settlement of account from the day the balance shall be agreed on, money received to the use of another and retained without the owner's consent, express or implied, from the receipt thereof, and on money loaned or due and withheld by unreasonable delay of payment, interest shall be allowed at the rate of twelve per cent. per annum. Unsettled accounts between parties shall bear interest after thirty days from the date of the last item thereof.

No time mentioned.

SEC. 5. When in any instrument in writing specifying the rate of interest, no period of time is mentioned for

which such rate is to be calculated, it shall be deemed to be by the year.

SEC. 6. Auditor's warrants, county orders, and other like evidences or certificates of indebtedness shall bear interest at the rate of twelve per cent. per annum, from the date of the presentation thereof for payment at the treasury, where the same may be payable until there is money in the treasury for the payment thereof, and every territorial or county treasurer to whom such order or warrant is presented for payment, provided he has not sufficient funds in the treasury to pay the same, shall indorse thereon the words "not paid for want of funds," and sign and date the same officially. Warrants, orders, &c.

SEC. 7. The legal rates of interest in all debts, dues and demands not above specified, shall be at the rate of twelve per cent. per annum, in the absence of any contract by the parties to the contrary. Debts not specified.

SEC. 8. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed. Acts repealed

SEC. 9. This act to take effect and be in force from and after its passage.

Approved, November 24, 1869.

LOCATION OF PENITENTIARY.

CHAPTER 64.

AN ACT TO LOCATE THE PENITENTIARY AND FOR OTHER PURPOSES.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows :

SEC. 1. That the penitentiary of the territory be and hereby is located at the town of Laramie in the county of Albany. Where located.

SEC. 2. As soon as the necessary appropriations are made for the erection of such penitentiary, the commis- Twenty acres, for site.

sioners hereafter [as may be] provided for, shall proceed within two weeks, or as soon thereafter [as possible,] to the town of Laramie, in the county of Albany, and there select a site for said penitentiary, consisting of not less than twenty acres of land, which site shall be within two miles of said town of Laramie, and if said land, so selected by them, shall be the property of, or the right of claim of possession be in any person or persons, and not in the United States, said commissioners shall obtain from such person or persons a deed or bond for a deed guaranteeing that such right, title or claim shall invest in the territory of Wyoming, upon the money so appropriated by the United States being paid over to the person duly authorized to receive it. But no money shall be paid by or on account of the territory or United States, for the extinguishment of any title, right or claim to land so selected by said commissioners.

Three commis-
sioners.

SEC. 3. The governor shall nominate, and by and with the consent of the council, appoint three commissioners who shall be styled "commissioners of the penitentiary," who shall hold their offices for two years from the passage of this act, and until their successors are appointed and qualified.

Duties of treasurer.

SEC. 4. It shall be the duty of the treasurer of the territory, upon receiving notice that an appropriation for the erection of a penitentiary has been made, and is ready to be paid over to this territory, to receive the same from the secretary of the territory, but before so doing, he shall execute a bond to the territory, with at least two good and sufficient sureties, to be approved by the governor, in double the amount of money appropriated, conditional that he will faithfully discharge his duties, and pay all orders drawn on him by the commissioners, and audited by the auditor, to the extent of the fund so appropriated, which bond shall be filed by the secretary of the territory, and carefully preserved in his office, and he shall receive for his services two per centum, to be deducted out of said fund, one-half of which he may

deduct upon his arrival at the territorial capitol with the money so appropriated, and the other half upon the completion of the penitentiary.

SEC. 5. It shall be the duty of said commissioners,^{Commissioners to advertise for proposals.} upon receiving notification that said appropriation has been made, to adopt some place for the construction of said penitentiary, and thereupon to advertise for thirty days in all newspapers published in the territory, for proposals for the erection of said penitentiary, either in whole, or for mason, iron, and wood work separately, which proposals shall be opened in the presence of all of said commissioners, or in the absence of any one of them, then in the presence of the remaining two, together with the auditor, and the contract or contracts shall be awarded to the person or persons who shall bid the lowest price for the work to be done, as specified in the proposals, and said commissioners shall pay said contractors from time to time as the work progresses, in such warrants on the treasurer as will facilitate the work, and enable the contractor to pay his hands,^{Contractors, how paid.} provided that at no time shall the money so paid exceed what in the opinion of the commissioners is one-half of the value of the work done, and upon the completion of the work they shall carefully examine the same within two weeks, and, if accepted, immediately draw orders on the treasurer for the balance due the contractor or contractors. But said commissioners shall confine their contracts, including fitting of and furnishing of said penitentiary, to the sum of money so appropriated.

SEC. 6. Upon the completion of said penitentiary, the Governor shall nominate some suitable person, to be^{Wardens — duties of.} approved by the commissioners, as warden of said penitentiary, who shall give bond in the sum of five thousand dollars, whose duty it shall be to take charge of and supervise said penitentiary, superintend all subordinate officers of said penitentiary, and see that they perform their respective duties, and report any failure thereof to the commissioners, and he shall take charge of all stores and property in said penitentiary and be accountable for the

Monthly statement.

same. Upon receiving any stores or property on account of said penitentiary, he shall enter the same in a book to be kept for that purpose, stating from whom received, and shall also keep an accurate account of all or any stores or property that may be taken from said penitentiary, upon whose order, and for what purpose. He shall direct the labor of all persons confined in said penitentiary sentenced or liable to labor, and keep an accurate account of all money received on account of the labor of convicts, at prices to be fixed by commissioners, and pay the same over to the treasurer at least once a month, and shall render a monthly statement of all his transactions to the commissioners, dating from the commencement of his operations, and be in all matters connected with the penitentiary subordinate to their orders, and said warden shall be paid for his services the sum of one hundred and twenty-five dollars per month, payable out of the territorial treasury upon a warrant to be drawn by the Auditor.

Duties of Commissioners.

SEC. 7. The commissioners shall meet once in every three months at the penitentiary, and inspect the same and examine into its affairs. They shall make all contracts in behalf of the same, and instruct the auditor as to the drawing of warrants for the payments of such contracts. They shall appoint the jailor and other officers necessary to said penitentiary, and discharge the same at pleasure, and for cause remove the warden, reporting such removal to the governor. They shall regulate the employment of persons under sentence in the penitentiary, make contracts for their labor, if deemed desirable, and fix the price of the products of their labor, if performed under the direction of the warden. Said commissioners may meet more than once in three months, if business of any urgent nature requires their attention, but such special meetings shall not be for more than one day, nor shall the regular meetings be for more than two days, and said commissioners shall receive for their services the sum of five dollars per day each for every day actually engaged in the business of the penitentiary, and ten cents for every mile necessarily traveled; and, upon pre-

sending certificates, verified before some person authorized to administer oaths, that such services have been rendered to the auditor, that officer shall draw warrants in their favor on the treasurer for the amount. *Provided*, that said auditor shall be fully satisfied that said accounts are in all respects correct. Proviso.

SEC. 8. Before entering upon their respective offices, the commissioners shall each give a bond with good and sufficient securities, to be approved by the territorial secretary, who shall file the same in his office, in the sum of two thousand dollars, conditioned that they will truly and faithfully discharge their respective duties, upon penalty of the sum therein stated, and shall take and subscribe the usual oath of office. Bonds.

SEC. 9. Each of said commissioners shall keep an accurate account of the time he has expended, and the distance he has traveled in superintending the erection of the penitentiary, which account, properly sworn to, shall be allowed by the auditor, if found correct, and warrants or orders drawn on the treasurer therefor, to be paid out of the general fund. Accounts.

SEC. 10. This act shall take effect and be in force from and after its passage.

Approved, December 8, 1869.

RAILROAD EMPLOYES.

CHAPTER 65.

AN ACT TO PROTECT RAILROAD EMPLOYES WHO ARE INJURED WHILE PERFORMING THEIR DUTIES.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming :

SEC. 1. Any person in the employment of any railroad company in this territory, who may be killed by any locomotive, car, or other rolling stock, or other property of said company, whether in the performance of his duty or other- Rights of action.

wise; his widow or heirs, may have the same right of action for damages against such company, as if said person so killed were not in the employ of said company, any agreement he may have made, whether verbal or written, to hold such company harmless or free from an action for damages in the event of such killing, shall be null and void, and shall not be admitted as testimony in behalf of said company, in any action for damages which may be brought against them; and any person in the employ of said company who may be injured by any locomotive, car, or other rolling stock of said company, or by other property of said company, shall have his action for damages against said company, the same as if he were not in the employ of said company, and no agreement to the contrary shall be admitted as testimony in behalf of said company.

SEC. 2. This act shall take effect from and after its passage.

Approved, December 7, 1869.

CHATTEL MORTGAGES.

CHAPTER 66.

AN ACT CONCERNING CHATTEL MORTGAGES.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

Mortgage to be
filed.

SEC. 1. No mortgage on personal property shall be valid as against the rights and interest of any third person, or persons, unless possession of such personal property be delivered to and remain with the mortgagee or the said mortgage be acknowledged and filed as hereinafter directed.

Fee.

SEC. 2. Any mortgagor of personal property may acknowledge such mortgage before any person authorized to take acknowledgments of deeds, the fee therefor shall be fifty cents.

SEC. 3. A mortgage to be of any force or effect as against any third party with or without notice, must be filed with the county recorder in the county where the property is, or the mortgagor resides, the recorder shall keep a book to be called chattel mortgage book, in which he shall enter the names of the parties, the date of the mortgage, and the time of filing, and when the mortgage will be due, and a brief description of the property, for which he shall receive a fee of one dollar.

To be filed with recorder.

SEC. 4. Any mortgage of personal property acknowledged as provided in the second section of this act, when filed in the office of the county recorder as provided in the next preceding section, shall, if *bona fide*, be good and valid from the date of its filing for a space of time, not exceeding one year, notwithstanding the property mortgaged or conveyed, may be left in the possession of the mortgagor; *Provided*, That such mortgage or conveyance shall provide for the property so to remain with the mortgagor.

Good for one year.

SEC. 5. Any person having conveyed any article of personal property to another by mortgage, who shall, during the existence of the lien or title created by such mortgage, sell the said personal property to a third party for a valuable consideration, without informing him of the existence and effect of such mortgage, shall forfeit and pay to such purchaser twice the value of such property so sold, which forfeiture may be recovered in an action of debt in any court having jurisdiction thereof, or if the amount claimed does not exceed one hundred dollars, before any justice of the peace, such party shall also be liable criminally for fraudulent practices.

Proviso.

Sale.

Forfeiture.

SEC. 6. The provisions of this act shall be deemed to extend to all such bills of sale, deeds of trust and other conveyances of personal property, as shall have the effect of a mortgage or lien upon such property.

Bills of sale &c.

SEC. 7. This act shall take effect and be in force from and after its passage.

Approved, November 24, 1869.

CONTAGIOUS DISEASES.

CHAPTER 67.

AN ACT TO PREVENT THE SPREAD OF CONTAGIOUS DISEASES.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SEC. 1. Any person who shall knowingly have or use about his premises, or, who shall convey or cause to be conveyed into any neighborhood, any clothing, bedding or other substance, used by, or in taking care of any person afflicted with the small pox or other infections or contagious disease, or infected thereby, or shall do any other act with intent to or necessarily tending to the spread of such disease into any neighborhood or locality, every person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction, shall be fined in any sum not more than five hundred dollars or imprisoned in the county jail not exceeding six months, or by both fine and imprisonment; and the court trying any such offender, may also include in any judgment rendered, an order to the effect that the clothing or other property infected be burned or otherwise destroyed, and shall have power to carry such order into effect.

Punishment.

Liabie in civil
action.

SEC. 2. Any person guilty of violating the provisions of section one of this act, in addition to the penalties herein prescribed, shall be liable in a civil action in damages to any and all persons, who may, from that cause, become infected with such contagious disease, said damages shall be so assessed as to include in addition to other damages, all expenses incurred by reason of such sickness, loss of time and burial expenses, and such action may also be maintained by the representative of any deceased person.

Approved, November 26, 1869.

ELECTIONS.

CHAPTER 68.

AN ACT TO PROVIDE FOR ELECTIONS—THE MANNER OF CONDUCTING THE SAME AND FOR OTHER PURPOSES.

Be it enacted by the Council and House, of Representatives of the Territory of Wyoming :

TITLE I.

SEC. 1. There shall be held in the several precincts or wards in this territory, a general election on the first Tuesday in September in each year hereafter, at which time there shall be chosen so many of the following officers, as are by law, to be elected in such year, that is to say: delegate to congress. (who shall be elected at the first general election.) Members of the council and house of representatives, who shall not be elected until the general election in the year one thousand eight hundred and seventy-one, (except to fill a vacancy.) Sheriff, probate judge, county superintendent of schools, county clerk, prosecuting attorney, three county commissioners, assessor, county surveyor, and coroner, justices of the peace and constables, as shall be provided by law, including all other county officers or territorial, as shall be provided by law.

Elections, when and where held.

What officers elected.

SEC. 2. Special elections may be held in the following cases, and for the election of the following officers :

Special election, when held.

First, When there has been no choice at the general election, of a delegate to congress, members of the council or house of representatives, or any county officers who should properly have been chosen at such general election.

Second, When the rights of a person elected to the office

of members of the council, members of the house of representatives, or either of the said county offices, shall cease, by death or otherwise, before the commencement of the term of service for which he shall have been elected.

Third, When a vacancy shall occur in either of said county offices, after the commencement of the term of service and more than three months before the next general election.

Fourth, When a vacancy occurs in the office of members of the council, or members of the house of representatives, after the general election, and before the meeting of the legislative assembly.

Vacancies.

SEC. 3. A vacancy in either of the offices named in the second section of this act, which shall not have been supplied by an election, before the general election next succeeding the happening thereof, may be supplied at such election.

Special elections, how conducted.

SEC. 4. Special elections shall be conducted, and the results thereof canvassed and certified, in all respects, as near as practicable, in like manner as general elections, except as otherwise directed; and no special election shall be held within ninety days preceding a general election.

Elections where held.

SEC. 5. All general and special elections shall be held at the place in each precinct or district where the last election was held, or at such other place therein as shall have been ordered by the board of county commissioners; *Provided*, Nothing in this act shall prevent the holding of two or more polls in one precinct or district when the same shall be ordered by the commissioners.

Proviso.

Adjournment.

SEC. 6. Whenever it shall become impossible or inconvenient to hold an election at the place designated therefor, the judges of election, after having assembled at or as near as practicable to such place, and before receiving any vote, may adjourn to the nearest convenient place for holding the election, and at such adjourned place, forthwith proceed with the election.

Proclamation.

SEC. 7. Upon adjourning any election, as provided in the preceding section, the judges shall cause proclamation thereof to be made, and shall station a constable, or some other proper person, at the place where the adjournment

was made, to notify all electors arriving at such place, of the adjournment and the place to which it was made.

SEC. 8. The secretary of the territory shall, between the first day of July and the fifteenth day of the same month in each year, in which a delegate to congress, or any other territorial officer are to be elected for a full term, make out and cause to be delivered to the sheriff of each county, a notice in writing, stating that at the next general election, the before mentioned territorial officers are to be elected, or so many of such officers as are then to be chosen.

Notice of election.

SEC. 9. If any vacancy shall exist in the office of delegate to congress, or any other territorial office, proper to be supplied at the ensuing general election, one month before such election, the secretary of the territory shall give notice in writing to the sheriff of each county, specifying the cause of such vacancy, the name of the officer in whose office it occurred, and the time when his term of office would have expired.

Notice, what to state.

SEC. 10. The secretary of the territory shall, between the first day of July and the fifteenth day of the same month in each year, in which the official term of any member of the council or member of the house of representatives will expire, make out and cause to be delivered to [the] sheriff of each county comprising such district, or to the sheriff of each county which shall form a part thereof, a notice in writing, specifying the number of the district, and the name of the member or members, whose term of office will so expire.

Ditto.

SEC. 11. All special elections for county officers, and the filling of all vacancies at a general election, shall be ordered by the county commissioners, which order shall be countersigned by the clerk of the board of county commissioners; in all other cases of special elections, they shall be called the governor.

Special election, by whom ordered.

SEC. 12. Every order or writ issued for a special election, shall specify the county or district in which such election is to be held, how the vacancy occurred, the name of the officer in whose office it occurred, the time when his

Orders, what to specify.

term of office would have expired, and the day on which such election is to be held, which shall not be less than twenty nor more than forty days from the date of the order or writ; and the same shall be forthwith delivered to the sheriff of the proper county, or in case of a vacancy in a district composed of more than one county, then to the sheriff of each county in such district.

Election pre-
sents.

SEC. 13. County commissioners of the several counties in this territory are hereby authorized to divide their respective counties into as many election precincts, for all general and special elections, as they may think expedient for the convenience of the voters of said county; and to appoint as many sets of judges of elections to receive votes at the county seats, as they may think necessary; and shall designate the house or place in such precinct, and in the precinct including the county seat, the house, or houses, the place, or places, at which elections are to be holden; and the precincts and places of holding elections so established, shall so remain until changed by the board of county commissioners; *Provided always*, That it shall be the duty of the county commissioners, at any time, to change any place of holding elections, upon a petition of a majority of voters residing within said precinct.

Proviso.

Judges of
election.

SEC. 14. The board of county commissioners shall respectively, at the last session preceeding any election, appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of the election in each election precinct; and the clerk of said board shall make out and deliver to the sheriff of the county, immediately after the appointment of said judges, a notice in writing directed to the judges so appointed; and it shall be the duty of said sheriff, within twenty days after the receipt of said notice, to serve said notice upon each of the said judges of the election.

Two clerks.

SEC. 15. The said judges of the election shall choose two persons having similar qualifications with themselves, to act as clerks of the election. The said judges of the election shall be, and continue judges of all elections of

officers to be held within their precinct, for one year, and until other judges shall be appointed, as hereinbefore directed, and the said clerks of election may continue to act as such during the pleasure of the judges of the election.

SEC. 16. If any person appointed to act as a judge of the election, as aforesaid, shall neglect or refuse to be sworn or affirmed to act in such capacity, the place of such person shall be filled by the votes of such qualified voters residing within the precinct, as may then be present at the place of election, and the person or persons, so elected or nominated to fill such vacancy or vacancies, shall be, and are hereby vested with the same power as if appointed by the board of county commissioners.

SEC. 17. The clerks of election shall, before they enter upon the duties of their office, take a like oath as hereinafter required of judges of election. The oath of both judges and clerks to be written out in full, and signed by such judges and clerks, and subscribed by the officer or person administering the oath.

TITLE II.

SEC. 18. That every male person above the age of twenty-one years, who shall have been a resident of this territory ninety days prior to any election, and who is a citizen of the United States, or have declared on oath before a competent court of record, their intention to become such, and have taken an oath to support the constitution and government of the United States, shall be entitled to vote; and be eligible to any office within said territory.

SEC. 19. No person under guardianship, *non compos mentis*, or insane shall be qualified to vote at any election; nor shall any person convicted of treason, felony, or bribery unless restored to civil rights; nor shall any person who shall have made or become either directly or indirectly, interested in any bet, or wager depending upon the result of any election at which he shall offer to vote, be permitted to vote at such election.

SEC. 20. At all general or special elections held in the

Elections to fill
vacancies.

territory of Wyoming, where the judges provided by law, or some of them are absent, the electors present at the polls of any election at the hour of nine o'clock, in the forenoon, shall proceed by *viva voce* vote to elect persons qualified as voters at such election to fill any vacancy to serve as judges of election, who, whether appointed by the commissioners or elected, shall then and there severally take the following oath: "I, A, B, do solemnly swear, (or affirm) that I will impartially, and to the best of my knowledge and ability, perform the duties of judge of this election, and will studiously endeavor to prevent all frauds, deceit and abuse in conducting the same." Such oath may be taken before any justice of the peace, or other person authorized to administer oaths; but if no person authorized to administer an oath be present, then such judges shall administer the oath to each other, with like effect in all proceedings, both civil and criminal, as though the oath had been administered by a person authorized to administer oaths independent of this act.

Oath.

Polls, where
and how long
opened

SEC. 21. At all elections, a poll shall be opened at the place of election in each precinct. Such polls shall be opened as soon after nine o'clock in the forenoon as possible, and be kept open until sundown without adjournment. Proclamation shall be made of the closing of the polls one-half hour before the closing thereof.

Constable to
preserve order.

SEC. 22. The judges of election shall appoint some constable present (if there shall be one) to preserve order at and about the polls. If no officer be in attendance, the judges of the election may appoint one specially by a written appointment, and he shall have all the powers of a regular constable, and be obeyed as such.

Riotous con-
duct

SEC. 23. If any person conducts himself in a noisy, riotous or tumultuous manner at or about the polls, so as to disturb the election, or insults or abuses the judges or clerks of election, or any voter in exercising his right of suffrage, it shall be the duty of the officer present forthwith to arrest such offending person or persons, and take him or them before some justice of the peace, if there shall be one

in the same village, camp or city, or if there is no justice of the peace at such place, then before the judges of election, and they are authorized, by a warrant under their hands, or a majority of them, to commit such offender to the jail of the county for a term not exceeding twenty-four hours. If ^{Punishment.} such offender be taken before a justice, he shall be dealt with as one guilty of a breach of the peace, and punished accordingly; but in all cases, such offender, if qualified, shall be allowed to vote before being committed, if he then desires to do so.

SEC. 24. The name of all persons voted for by any ^{Names all on one ballot.} elector at any general or special election, shall be on one ballot.

SEC. 25. Every elector shall vote by ballot, and ^{Manner of voting.} each person offering to vote shall deliver his ballot to one of the judges of election in the presence of the others. The ballot shall be a paper slip upon which shall be written or printed, or partly written or partly printed, the names of persons for whom the elector intends to vote, and shall designate the office to which each person so named is intended by him to be chosen; but no ballot shall contain a greater number of names of persons designated to any office, than there are persons to be chosen at the election to fill such office.

SEC. 26. It shall be lawful for any elector to vote for ^{Delegate to congress, where voted for.} delegate to congress, at any place of holding election in the territory. For all other officers, electors must vote in the precinct where they reside at the time of such election.

SEC. 27. If any person offering to vote shall be ^{Oath of person challenged.} challenged as unqualified by the judges or clerks of election, or by any other person entitled to vote at the same polls, the judges shall declare to the person so challenged the qualification of voters; if such person shall then state himself duly qualified and the challenge be not withdrawn, one of the judges shall then tender to him the following oath: "You do solemnly swear (or affirm) that you are twenty-one years of age; that you are a citizen of the United States (or that you have declared your intention to

become a citizen conformably to the laws of the United States on the subject of naturalization); that you have resided in this territory ninety days next preceding this election; that you have not voted at this election."

Perjury.

SEC. 28. If any person so offering to vote shall take such oath, his vote shall be received; and if such oath shall be knowingly false, the person taking it shall be deemed guilty of perjury, and shall, upon conviction thereof, be punished under the law fixing a penalty for perjury.

Ballot-box.

SEC. 29. There shall be provided and kept by judges of each election precinct, (at the expense of the county), a substantial ballot box, with lock and key; there shall be an opening through the lid of such box of sufficient size to admit a single folded ballot. Before opening the polls the judges shall examine such box that nothing may remain therein; it shall then be locked and the key thereof delivered to one of the judges to be designated by the others, after which such box shall not be opened during the election.

Judge to deposit ballot.

SEC. 30. When a ballot shall be received, one of the judges, without opening the same or permitting it to be opened or examined (beyond determining whether the same be double), shall deposit it in the box. It shall be the duty of each judge or clerk of the election to challenge all persons whom he shall know or shall suspect as not being qualified voters.

Duty of clerks and judges to challenge.

List of voters.

SEC. 31. Each clerk shall keep a full list, which shall contain the names of all the persons voting at such election in their numerical order. In case of adjournment each clerk shall keep his poll list, and the judges shall seal up the hole in the box; one of the judges taking the box, and another the key, and if any judge or clerk of election or other person shall open said box in any way during such adjournment, he shall be deemed guilty of a misdemeanor, and punished upon conviction thereof with imprisonment not less than three nor more than nine months.

Adjournment.

Census of the vote.

SEC. 32. As soon as the polls of the election shall be closed, the judges shall proceed immediately, publicly to can-

pass the vote given, and shall continue without adjournment until completed. The canvass must commence by a comparison of the poll lists, and they must be made to agree; the ballot box shall then be opened, and the ballots counted by the judges and clerks unopened, and if there are more ballots than names upon the poll list, the ballots must be returned to the box, shaken up, and one of the judges shall draw from such box ballots enough to make the remainder agree with the poll list, which ballots so drawn shall be destroyed; and ballots being found so folded as to bear the appearance of having been voted by one person, they shall not be counted, but preserved with the poll books; the poll list and ballots being made to agree, the judges and clerks shall then proceed to count and ascertain the number of votes cast for each person named upon such ballots when the votes shall have been examined and counted, the clerks shall set down in their poll books the name of every person voted for, written at full length, the office for which such person received such vote or votes, and the number he did receive, the numbers being expressed in words at full length, such entry to be made as nearly as circumstances will admit, in the following form, to wit: "At an election held at the house of _____ in _____ precinct, in the county of _____ and territory of Wyoming, on the _____ day of _____ in the year of our Lord one thousand eight hundred and _____, the following named persons received the number of votes annexed to their respective names, for the following described offices, to wit: _____ had _____ votes for delegate to congress _____ had _____ votes for council; _____ had _____ votes for house of representatives; _____ had _____ votes for sheriff; _____ had _____ votes for county clerk; _____ had _____ votes for county treasurer; _____ had _____ votes for county commissioners; _____ had _____ votes for probate judge; _____ had _____ votes for county superintendent; _____ had _____ votes for coroner; _____ had _____ votes for surveyor; _____ had _____ blank votes for county assessor; _____ had _____ votes for

Contents of
poll book.

Certificate.

county attorney ; ——— had ——— votes for justice of the peace ; ——— had ——— votes for constable. Certified by us, A., B., C., D., E., F., judges of election. Attest, G., H. I., J., clerks of the election." And as soon as all the votes shall have been read off and counted, the judges or board of election shall make out a certificate under their hands as provided in this section.

Poll-book delivered to county clerk.

SEC. 83. The judges of the election shall then inclose and seal one of the poll books under cover, directed to the county clerk of the county in which such election is held, and the packet thus sealed, shall be conveyed by one of the judges or clerks of the election, to be determined by lot, if they cannot agree otherwise, and delivered to the said county clerk of the county, at his office, within fourteen days from the closing of the polls. And if any judge or clerk of an election, after having been deputed by the judges of the election at which he served as judge or clerk, to carry the poll book of such election to the county clerk of the county, shall fail or neglect to deliver such poll book to the said county clerk, within the time prescribed by law, save, with the seal unbroken, he shall, for every offense forfeit and pay the sum of five hundred dollars, for the use of the county, to be recovered in the name of the commissioners of the county, by an action of debt, in any court of competent jurisdiction : *Provided*, That informality in the delivery of the poll books, as directed by this section, shall not invalidate the vote of any precinct.

Penalty for neglect

Proviso.

Abstract.

SEC. 84. On the fifteenth day after the close of the election, or sooner, if all the returns be received, the county clerk of the county taking to his assistance two justices of the peace of his county, shall proceed to open the said returns and make abstracts of the votes in the following manner: The abstract of votes for delegate to congress, shall be in one sheet, and the abstract of votes for members of the council and house of representatives of the legislative assembly shall be on another sheet, and the abstract of votes for county offices shall be on another sheet ; and it shall be the duty of the said county clerk of the county immediately

to make out a certificate of election to each of the persons having the highest number of votes for county offices respectively, and deliver such certificate to the person entitled to it, on his making application for that purpose to the county clerk at his office.

SEC. 85. It shall be the duty of the county clerk of each county, on the receipt of the election returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of each election may be entitled for services, and lay the same before the board of county commissioners at their next meeting; and the said board shall order the compensation aforesaid to be paid out of the county treasury. Certificate for compensation.

SEC. 86. The county clerk of the county, immediately after making out abstracts of votes given in his county, shall make a copy of such abstract, and transmit the same by mail or by some safe conveyance, to the office of the secretary of the territory. Copy of abstract.

SEC. 87. If the returns of the election of any county in this territory shall not be received at the office of the secretary of the territory, within thirty days after the election, the said secretary shall forthwith send a messenger to the county clerk of such county, whose duty it shall be to furnish such messenger with a copy of such return; and the said messenger shall be paid out of the territorial treasury, the sum of five dollars per day, and fifteen cents per mile for each mile he shall necessarily travel in going to and returning from the office of said clerk. Returns not received.

SEC. 88. The secretary of the territory, auditor, treasurer, or any two of them, in the presence of the governor, shall proceed, within thirty days after the election, and sooner, if all the returns be received, to canvass the vote given for all territorial officers, and members of the council and house of representatives, and the governor shall give a certificate of election to the persons having the highest number of votes for each office. In case there shall be no choice, by reason of any two or more persons having an equal number of votes for the same office, Canvassing of votes for territorial officers.

No choice.

the governor shall call a special election in the manner provided by law. If any judge of the election, or clerk, or any other officer or person, in any manner concerned in conducting the election, shall wilfully neglect, improperly delay, or refuse to perform any of the duties required by by this act, after having undertaken to perform such duties, he shall forfeit and pay to the territory the sum of fifty dollars; and if any such judge of the election, clerk, or other officer or person, in anywise concerned in conducting the election, shall knowingly admit any person to vote not qualified according to law, or shall knowingly receive and count more than one vote from one person at the same election, for one office, or shall be guilty of fraud, corruption or partiality, or manifest misbehavior in any matter or thing relating to said election, each and every person so offending shall forfeit and pay to the county the sum of one hundred dollars, to be recovered in any court of record in the territory, for the use of the county in an action of debt, with costs of suit, or at the suit of any person who may sue for the same, one-half for the use of the person suing, and the other half for the use of the county; and every such person so offending shall, on conviction, be rendered incapable of holding any office within this territory.

Neglect of
duty of judge or
clerk of election.

Refusal to re-
ceive legal votes.

SEC. 39. If any judge or judges of election shall refuse to receive the vote of any elector, according to the first section of this act, who shall comply or offer to comply with the provisions of this act, then every judge or the judges so refusing or neglecting to receive the vote of the person aforesaid, and to record it as a legal vote, shall be liable to be indicted, and on conviction, be fined five hundred dollars, and imprisoned not exceeding thirty days.

Refusal of
county clerk.

SEC. 40. If the county clerk shall neglect or refuse to perform the duties as pointed out in this act, he shall be liable to be indicted, and on conviction, shall be fined in a sum not exceeding five hundred dollars, and imprisoned not exceeding thirty days.

Mutilation of
poll-book.

SEC. 41. If any person shall mutilate or erase any name, figure or word in a poll book taken or kept at any

election, or if any person shall take away such poll book from the place where it has been deposited for safe keeping, with an intention to destroy the same, or to procure or prevent the election of any person; or if any person shall destroy any poll book so taken and kept at any election, he or she shall be liable to be indicted, and on conviction, shall be fined not exceeding five hundred dollars, and imprisoned not exceeding sixty days in the county jail.

SEC. 42. No mere irregularity in the form of oath administered to any judge or clerk of election, or in certifying the same, or in signing or returning the statement of the result of any election, or any other irregularity in the manner of conducting any election, shall authorize the county board of canvassers in throwing out the vote of any precinct, but the vote returned shall be counted by the board of county canvassers, unless said improprieties are such as to bear evidence of fraudulent practices, in which case the vote shall not be counted, but a record of all the facts pertaining to such irregularities shall be made by such board and filed with the register of deeds.

Irregularity.

TITLE III.

SEC. 43. If any person shall be defeated for any office by the rejection of any vote of a precinct or precincts, such person or any elector of the proper county or council or representative district, may contest the validity of such rejection, or the right of any person proclaimed duly elected to his seat in the council or house of representatives. Such person shall give notice thereof in writing to the person whose election he intends to contest, or leave a written notice thereof at the house where such person last resided, within twenty days after the vote of the election shall have been canvassed by the territorial board of canvassers, expressing the points on which the same will be contested, and the names of two justices of the peace, who will officiate at the taking of the depositions, and when and where they will attend to take the same; and such notice

Defeat by rejection of vote.

Where can contest.

Procedure.

shall be served at least ten days before the day so pointed out therein for the taking of the depositions.

Justices have
power to issue
subpoenas.

SEC. 44. That the said justices or either of them shall have power, and are hereby authorized and required to issue subpoenas to all persons whose testimony may be required by either of the parties, and the said two justices, when met, shall hear and certify under seal, all testimony relative to such contested election, to the presiding officer of the branch of the legislative assembly where the person whose seat is contested, may be returned to [be] served at the next session.

No person to
contest unless an
elector.

SEC. 45. That no person shall contest the election of any member of the council or house of representatives, unless he is an elector of that county or district from which the person is returned to serve; no testimony shall be received by the justices on the part of the person contesting the election, which does not relate to the point specified in the notice, a copy of which notice shall be delivered to the said justices and by them transmitted to the presiding officer of that branch of the legislative assembly where the contest is to be decided, with the other documents.

Method pur-
sued in contest-
ing.

SEC. 46. That the method to be pursued in contesting the election of persons declared duly elected sheriff, coroner, county recorder, county treasurer, county commissioner, or county assessor or other county officers, shall, in every respect, be similar to the method directed as aforesaid to be pursued in contesting the election of members of the council and house of representatives of the legislative assembly, save only that the testimony taken as aforesaid, and all matters relative to such contest, shall be sent to the probate court of the proper county, on or before the second day of the term next ensuing the thirty days allowed in which to take depositions, by the preceding sections; and the said probate court, at the said first term after thirty days shall have expired, shall hear and determine the contest.

Punishment for
neglect of duty.

SEC. 47. That if any officer charged with any duties under this act, shall refuse or neglect to perform the duties required of him by this act, according to the true intent and meaning thereof, he shall, on conviction thereof, before any

court having cognizance to that amount, be fined in any sum at the discretion of the court, not exceeding two hundred dollars.

SEC. 48. Any person who shall vote in this territory, Fraudulent voting. who has not been a resident thereof ninety days immediately preceding the election, or who at the time of the election is not twenty-one years of age, he knowing the same, or is not a citizen of the United States, or declared his intentions to become such, as provided by law, he knowing the same, shall on conviction thereof, be imprisoned in the penitentiary and Punishment. kept at hard labor not less than six months, nor more than three years.

SEC. 49. Any person who shall procure, aid, assist, or advise another to go into any county for the purpose of giving his vote therein, knowing that such other person is not qualified to vote in such county, shall on conviction thereof, be fined in a sum not exceeding one hundred dollars. Ditto.

SEC. 50. Any person who shall, after the opening of the polls, fraudulently put a ballot or ballots, or ticket or tickets into the ballot box, shall on conviction thereof, be imprisoned in the penitentiary and kept at hard labor not less than one year, nor more than three years. Ditto.

SEC. 51. When any persons vote shall be received after having taken the oath prescribed in this act, it shall be the duty of the clerk of the election to write on the poll-book at the end of the name of such person, the word "sworn." "Sworn."

SEC. 52. Any judge of the election who shall, after the opening of the polls, put a ballot or ticket into the ballot box, except his own, or such as may be received in the regular discharge of his duty, shall on conviction thereof, be imprisoned in the penitentiary and kept at hard labor not less than five years, nor more than ten years. Stuffing. Punishment.

SEC. 53. That all fines and penalties imposed by this act, shall be recovered with costs of suit in an action of debt Fines and penalties, how recovered. for the use of the county.

SEC. 54. This act shall take effect and be in force from and after its passage.

Approved, December 10, 1869.

LOGS AND LUMBER.

CHAPTER 69.

AN ACT TO SECURE THE FREE PASSAGE OF LOGS AND LUMBER DOWN THE SEVERAL CREEKS AND RIVERS OF THIS TERRITORY.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

All creeks and rivers free.

SEC. 1. That all creeks and rivers within the territory of Wyoming of sufficient size for floating or driving logs, timber or lumber, and which may be used for that purpose, are hereby declared to be public highways, so far as to prevent obstructions to the free passage of logs, cross ties, wood, telegraph poles, timber or lumber down said streams or either of them.

No dam or boom permitted.

SEC. 2. That no dam or boom shall hereafter be constructed or permitted on any river as specified in this act, unless said dam or boom shall have connected therewith a sluice-way, lock or other fixture sufficient and so arranged as to permit logs, cross-ties, wood, telegraph poles, timber and lumber to pass around, through or over said dam or boom, without unreasonable delay or hindrance.

Fine.

SEC. 3. Any boom or wier now in or over any river as aforesaid, that is so constructed as to prevent the free passage of logs or lumber, is hereby declared a public nuisance, which shall be abated unless a suitable sluice-way, lock or passage as above provided, be made thereon as aforesaid within thirty days after written notice given by any person interested, and any person or persons so owning, holding or occupying said boom or weir shall be liable to pay five dollars for every day the same shall be suffered to

remain in or over said river after having had thirty days notice to remove said nuisance (which may be recovered before any justice of the peace having jurisdiction in the case, and the amount so recovered shall be collected by said justice and paid into the county treasury of the county where such offense was committed, for the use of common schools therein, and shall furthermore be liable for any damages sustained by individuals by reason of said nuisance.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved December 2d, 1869.

PUBLIC LANDS.

CHAPTER 70.

AN ACT PRESCRIBING RULES AND REGULATIONS FOR THE EXECUTION OF THE TRUST ARISING UNDER THE ACT OF CONGRESS, ENTITLED "AN ACT FOR THE RELIEF OF THE INHABITANTS OF CITIES AND TOWNS UPON THE PUBLIC LANDS," APPROVED MARCH 2, 1867.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

SEC. 1. When the corporate authorities of any city or town, or the judge of the district court for any county or district in this territory, in which any incorporated town may be situate, shall have entered at the proper land office, the land or any part of the land, settled and occupied as the site of such city or town, pursuant to and by virtue of the act of the congress of the United States, entitled, "an act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, it shall be the duty of such corporate authorities or judge to dispose of and convey the title to such lands or to the several blocks, lots, parcels or shares thereof, to the persons hereinafter specified.

Corporate authorities or judge to dispose of lands.

SEC. 2. Any such corporate authorities or judge holding the title to any such land in trust, as declared in said act of

Deed of conveyance.

congress, shall by a good and sufficient deed of conveyance, grant and convey the title to each and every block, lot, share or parcel of the same, to the person or persons, who shall have, possess, or be entitled to the right of possession or occupancy thereof. according to his, her, or their several and respective right or interest in the same, as they existed in law or equity at the time of the entry of such lands, or to his, her, or their heirs or assigns; and when any parcel or share of such lands shall be occupied or possessed by one or more persons claiming the same by grant, lease or sale, from one or more other persons, the respective right and interest of such persons in relation to each other in the same, shall not be changed or impaired by any such conveyance. Every deed of conveyance made by such corporate authorities or judge, pursuant to the provisions of this act, shall be so executed and acknowledged as to admit the same to be recorded.

To be recorded

Public notice.

SEC. 3. Within thirty days after the receipt by them or him, of a patent for such lands, the corporate authorities, or judge entering the same, shall give public notice thereof, by publishing such notice in a newspaper printed and published in the county in which such city or town shall be situated, or in case there shall not be any newspaper published in said county, then in some newspaper printed and published at the seat of government of this territory. Such notice shall be so published once in each week for at least ten successive weeks, and shall contain an accurate description of the lands so entered, as the same is stated in the patent.

Occupants to sign statement.

SEC. 4. Each and every person, company of persons, association or corporation, claiming to be an occupant or occupants, or to have, possess or be entitled to the right of occupancy, or possession of such lands, or any block, lot, share or parcel thereof, shall, within one year after the first publication of such notice, in person, or by his, her, their, or its, duly authorized agent or attorney, sign a statement in writing, containing an accurate description of the particular parcel in which he, she, they or it, claim to have an interest, and the specified right, interest, or estate therein, which he,

she, they, or it, claim to be entitled to receive, and deliver the same to, or into the office of such corporate authorities or judge, and all persons failing to sign and deliver such statement within the time specified in this section, shall be forever debarred the right of claiming or recovering such lands, or any interest or estate therein, or any part, parcel or share thereof, in any court of law or equity; *Provided*, That the provisions of this section shall not apply to the property of minors or insane persons.

SEC. 5. Should two or more persons claim adversely the title to any lot or lots, or parcels of land within the boundaries of such city or town, the corporate authorities or judge having entered the same, shall, immediately after the time for filing claims has expired, certify and transmit all proceedings and papers, had or being before them or him in the premises, to the district court of the county, in which said lot or lots, or parcel of land are situated. Upon the receipt of the papers properly certified, and upon payment of court fee and costs, the clerk of such district court shall enter the case upon the register of actions, the name of the claimant whose claim was first filed with, and by such corporate authorities or judge, being entered upon such register as plaintiff, and the other claimant or claimants as defendant, and thereafter the cause shall proceed in all respects as in cases originally brought in said court.

The clerk shall, upon the receipt by him of such papers and proceedings, serve upon each claimant, his agent or attorney, a written notice that the claim of such claimant is contested, which notice shall specify the particular lot, block or parcel so contested, and the name of the adverse claimant. Upon the final determination of such contest, the clerk of the district court, or supreme court as the case may be, shall forthwith certify the decision to the corporate authorities, or judge, and upon the receipt of such decision duly certified, the corporate authorities or judge as in other cases, make out, execute and deliver to the party or parties, in whose favor the decision is made a conveyance in fee simple

Adverse claimants. Service upon claimants.

Final determination.

for the lot or lots, or parcels of land awarded in such decision.

Appeal.

SEC. 6. Any party in such action, deeming himself or herself aggrieved by the determination or judgment of the district court in such cases, may appeal therefrom to the supreme court, as in other cases.

Deed in fee simple.

SEC. 7. After the issuance of the patent for such lands, it shall be the duty of the corporate authorities or judge to whom such patent shall issue, to make out, execute, and deliver to each person, company, association or corporation, who may be legally entitled to the same, a deed in fee simple for such part or parts, lot or lots of land, on payment of his, her, their or its proper and due proportion of the purchase money for such land, together with his, her, their or its proportion of such sum as may be necessary to pay for streets, alleys, squares and public grounds, not exceeding fifty cents for each lot, and also such further sums as shall be a reasonable compensation for prepaying, executing and acknowledging such deed, and not exceeding the sum of five dollars for the first and one dollar for each additional lot claimed by the same owner; also for prepaying for the stamps required by the laws of congress and of this territory to be attached to such deed, and also for counsel fee and for moneys expended in the acquisition of the patent and the administration of the trust, including reasonable charges for time and services employed in such trust, not exceeding the sum of fifty cents for each lot, and the foregoing charges shall be full payment for all expenses attending the execution of the trust.

Charges.

Sold to highest bidder, when.

SEC. 8. If all the lots, blocks, shares or parcels of such land, are not legally conveyed to the proper owners before the expiration of one year after the same shall have been passed upon by the corporate authorities or judge, or in case of contest, within thirty days after such contest shall have been finally determined, the same shall be sold to the highest bidder, and the proceeds applied to the erection of public buildings for the benefit of such city or town, after paying their proportionate share of the purchase money and other

expenses, including expenses incurred by publication and sale. Notice of the sale authorized by this section shall be published as is provided for the notice required by section three of this act; *Provided*, That the provisions of this section shall not apply to the sale of real estate belonging to minors or insane persons, except upon an order of court authorizing such sale, which order may be made by the court upon an *ex parte* application under oath of the trustee named in this act. Provide.

SEC. 9. Any corporate authorities or judge becoming a trustee under said act of congress who shall, prior to the final execution of their trust as provided in this act, go out of office, shall be, and they are hereby authorized and empowered to discharge and execute all trusts which they may have assumed in all respects in the same manner, and subject to the same duties and requirements as if they had continued in office. Trustees go out of office.

SEC. 10. In case of death, removal from the territory, or other disability of the trustee to execute the trust created by said act of congress, it shall be lawful for the corporate authorities or judge of the district in which any such city or town is situated, who may succeed said trustee in office, to assume said trust, and they or he shall be authorized, and they are hereby empowered to execute the same in all respects in the same manner subject to all the duties and requirements as provided in this act. Successors to assume trust.

SEC. 11. This act to take effect and be in force from and after its passage.

Approved, December 4, 1869.

MARRIAGES.

CHAPTER 71.

AN ACT TO REGULATE MARRIAGES.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming :

Civil contract. SEC. 1. In law, marriage is considered a civil contract, to which the consent of parties capable of contracting is essential.

Age. SEC. 2. At the time of marriage the male must be of the age of eighteen years or upwards, and the female of the age of sixteen or upwards.

When void. SEC. 3. Marriages that are declared void by the divorce law of this territory shall, in no case be solemnized.

License. SEC. 4. Previous to the solemnization of any marriage in this territory, a license for that purpose must be obtained from the county clerk of the county wherein the marriage is to take place.

Consent of parent. SEC. 5. When either party is a minor, no license shall be granted without the verbal consent, if present, and written consent if absent, of the father, if living, if not, then of the mother of such minor, or of the guardian or person under whose care and government such minor may be, which written consent shall be proved by the testimony of at least one competent witness.

Duty of clerk. SEC. 6. When application shall be made for a license, the county clerk shall, by the testimony of some competent witness, or of the applicant, ascertain the christian and surname of the parties, their respective places of residence, that they are of sufficient age to be capable in law of

contracting marriage, and whether there be any legal impediment to the parties entering into the marriage contract, and he shall enter the facts so ascertained, and date the license in a book to be kept by him for that purpose.

SEC. 7. If, on such testimony being given, it shall appear that either of the parties is legally incompetent to enter into such contract, or that there is any impediment in the way; or if either party is a minor, and the consent mentioned in section five shall not be given, the said clerk shall refuse to grant a license. License refused.

SEC. 8. Every judge and justice of the peace, and every licensed or ordained preacher of the gospel, may perform the ceremony of marriage in this territory. Who may solemnize marriage

SEC. 9. In the solemnization of marriage, no particular form shall be required, except that the parties shall solemnly declare in the presence of the magistrate or minister. and the attending witnesses, that they take each other as husband and wife, and in any case there shall be at least two witnesses beside the minister or magistrate, present at the ceremony. No particular form.

SEC. 10. When a marriage shall have been solemnized, pursuant to the provisions of this act, the minister or magistrate who solemnized the same, shall give each the of parties on request, a certificate under his hand, specifying the names, ages and place of residence of the parties married, the names and residence of at least two witnesses who were present at such marriage, and the time and place thereof. Certificate.

SEC. 11. Every person having authority to join others in marriage, shall, within three months after the solemnization of any such marriage, make and deliver to the county clerk of the county in which the marriage took place, a certificate containing the particulars mentioned in the preceding section. Certificate delivered to county clerk.

SEC. 12. The county clerk of each county in the territory, shall record all such returns of such marriages in a book to be kept for that purpose, within one month after receiving the same. To be recorded.

SEC. 13. If any justice, minister, or other person,

Failure to make
and record certi-
ficate.

whose duty it is to make and transmit to the county clerk such certificate, shall neglect to make and deliver the same, or if the county clerk shall neglect to record such certificate, or if any person shall undertake to join others in marriage, knowing that he is not legally authorized so to do, or knowing of any legal impediment to the proposed marriage, or if any person authorized to solemnize any marriage shall wilfully and knowingly make a false certificate of any marriage to the county clerk, or if the said county clerk shall wilfully and knowingly make a false record of any certificate of marriage to him made, he shall be deemed guilty of misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or imprisonment for a period not exceeding one year, at the discretion of the court.

Marriage when
not void.

SEC. 14. No marriage solemnized before any person professing to be a justice of the peace or a minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way effected on account of any want of jurisdiction or authority in such supposed justice or minister; *Provided*, The marriage be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Any religious
society

SEC. 15. It shall be lawful for any religious society to join together in marriage, such persons as are of the said society, according to the rights and customs of such society to which they belong, the clerk or keeper of the minutes, proceedings, or other book of the religious society wherein such marriage shall be had, or if there be no such clerk or keeper of the minutes, then the moderator or person presiding in such society, shall make out and transmit to the county clerk of the county, a certificate of the marriage, and the same shall be recorded in like manner as is provided in the preceding section of this title.

Original certi-
ficate.

SEC. 16. The original certificate and record of marriage made by the minister, officer, or person as prescribed in this title, and the record thereof made as prescribed, or a copy of such record duly certified by such officer, shall be

received in all courts and places as presumptive evidence of the fact of such marriage.

SEC. 17. All marriage contracts without this territory, which would be valid by the laws of the country, in which the same were contracted, shall be valid in all courts and places in this territory. Contracts without this territory

SEC. 18. All acts and parts of acts inconsistent with the provisions of this act, are hereby repealed. Acts repealed.

SEC. 19. This act shall take effect and be in force on and after the first day of January, one thousand eight hundred and seventy.

Approved, December 10, 1869.

DEPOSITIONS.

CHAPTER 72.

AN ACT PROVIDING FOR THE APPOINTMENT OF COMMISSIONERS TO TAKE DEPOSITIONS IN OTHER STATES AND TERRITORIES.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming :

SEC. 1. The governor may appoint, in each of the United States and territories, and in the District of Columbia, one or more commissioners, to continue in office during the pleasure of the governor for the time being, and every such commissioner shall have power to administer oaths and to take depositions and affidavits, to be used in this territory, and also to take the acknowledgments of deeds, powers of attorney, or other instruments to be recorded in this territory. Appointed by governor.

SEC. 2. All oaths administered by the said commissioners, all affidavits and depositions taken by them, and all acknowledgments aforesaid, certified by them, shall be as effectual in law, to all intents and purposes, as if done and certified by any authorized officer within this territory. Oaths, &c., effectual in law.

Oath taken and
filed.

SEC. 3. Before any commissioners appointed as aforesaid, shall proceed to perform any of the duties of their office, they shall take and subscribe an oath before any justice of the peace, or other officer authorized to administer oaths in the state or territory for which such commissioners may be appointed, that they will faithfully discharge all the duties of their office, which oath shall be filed in the office of the secretary of this territory, within six months after the taking of the same, and also his autograph and impression of his seal of office.

SEC. 4. This act shall take effect and be in force from and after its passage.

Approved, December 2, 1869.

PRESERVATION OF EVIDENCE.

CHAPTER 73.

AN ACT TO PROVIDE FOR PRESERVING THE EVIDENCE OF THE OFFICIAL ACTS OF OFFICERS, TAKING ACKNOWLEDGMENTS, &c.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows:

Record of all
official acts.

SEC. 1. Each officer authorized by law to take the proof or acknowledgment of the execution of conveyances of real estate, or other instrument required by law to be proved or acknowledged, shall keep a record of all his official acts in relation thereto, in a book to be provided by him for that purpose, in which shall be entered the date of the proof or acknowledgment thereof, the date of the instrument, the name or character of the instrument proved or acknowledged, and the names of each of the parties thereto as grantor, grantee, or otherwise. Said record shall, during business hours, be open to public inspection without fee or reward.

SEC. 2. Any officer aforesaid refusing or neglecting to

comply with the requirements of this act, shall be deemed and held guilty of a misdemeanor, and on conviction thereof, ^{Refusal or Neglect.} fined before any court of competent jurisdiction, in any sum not less than fifty dollars, nor more than five hundred dollars, and shall, in addition, be liable on his official bond in damages to any person injured by such refusal or neglect, to the extent of the injury sustained by reason of the refusal or neglect mentioned in this section.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved, December 2, 1869.

CODE OF CRIMINAL PROCEDURE.

CHAPTER 64.

AN ACT TO ESTABLISH A CODE OF CRIMINAL PROCEDURE FOR THE TERRITORY OF WYOMING.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows :

TITLE I.

Proceedings to Prevent the Commission of Crime.

SEC. 1. Whenever any person shall make complaint in writing upon oath before any justice of the peace or police justice, or other officer authorized by law to examine into charges in relation to the commission of crime, that he has just cause to fear, and does fear, that another will commit any offense against the person or property of himself, his ward, or child, it shall be the duty of the justice before whom such complaint is made to issue a warrant in the name of the territory to any constable of the county, commanding him forthwith to arrest the person complained of, and him to take before such justice, or any other justice named in the same county, to answer such complaint. ^{Justice to issue warrant, when.}

SEC. 2. When the party complained of shall be brought

Recognizance,
when given.

before the justice, he shall be heard in his defense, and all witnesses produced shall be examined upon oath, and if upon such examination the justice shall be of opinion there is just cause for the complaint, he shall order the person complained of to enter into recognizance, with good and sufficient surety, in any sum not less than fifty dollars, nor more than five hundred dollars, for his appearance before the district court on the first day of the next term thereof, and in the meantime that he shall keep the peace, and be of good behavior generally, and especially toward the person complaining.

Default.

SEC. 3. In default of such recognizance and surety as provided in the preceding section, the justice shall commit the person complained of to the jail of the county, there to remain until discharged by due course of law.

Judgment
against com-
plainant.

SEC. 4. But if the justice on the examination shall be satisfied that there is no just cause for the complaint, it shall be his duty to discharge the accused, and render judgment in the name of the territory against the party complaining, for the costs of the prosecution, and the same shall be collected by execution as in civil cases.

Person bound
to appear forth-
with.

SEC. 5. If any recognizance be taken under the provisions of this title in term time of that court to which the same may be returnable, every such recognizance shall require the person bound thereby to appear forthwith before such court.

Delivered to
clerk.

SEC. 6. All recognizances authorized to be taken as aforesaid, either in term time or vacation of that court to which the same may be returnable, shall be delivered or transmitted by the justice taking the same, to the clerk of such court without unnecessary delay, and before the commencement of the term of the court next thereafter to be holden, if such recognizance be taken in vacation; but if the same be taken in term time, then it shall be returned forthwith.

Witnesses ex-
amined on oath.

SEC. 7. The district court to which any recognizance to keep the peace, as aforesaid, shall be returned, shall, upon the appearance of the parties complaining and complained

of, examine the witnesses produced upon oath, and may either discharge the accused from his recognizance, or may order him to enter into such other and farther surety as may be just, thereafter to keep the peace, and be of good behavior for such term of time as the court may order.

SEC. 8. For want of such surety, the court shall commit ^{Committed to jail.} the person accused to the jail of said county, there to remain until such order be complied with, or he be otherwise discharged by due course of law; but in no case shall a person so failing to give surety be confined for a period of time exceeding three months.

SEC. 9. Whether such person be held to bail or be committed for want thereof, the court shall in either case render judgment against him for the costs of the prosecution and award execution therefor. ^{Judgment and execution.}

SEC. 10. When any person shall have been recognized to the district court, to keep the peace as aforesaid, and the complainant shall fail to prosecute his complaint, the party recognized shall be discharged unless good cause to the contrary be shown. ^{Failure to prosecute.}

SEC. 11. If the district court shall discharge the person accused on examination of the complaint, or because the complainant has failed to appear, said court shall render judgment against the person complaining, for the costs of prosecution, and award execution therefor. ^{Judgment against complainant.}

SEC. 12. Every person who, in the presence of any justice specified in the first section, shall make an affray or threaten to kill or beat another, or to commit any offense against the person or property of another, and every person who, in the presence of such officer, shall contend, with hot and angry words, to the disturbance of the peace, may be ordered without process or any other proof, to give such surety as above specified in this title, and in case of failure or refusal, he may be committed in like manner as above specified. ^{Affray in presence of justice.}

TITLE II.

Search Warrant.

SEC. 13. It shall be lawful for any justice or other

justice, charging any person with the commission of any offense, it shall be the duty of such justice to issue a warrant for the arrest of the person accused, if he shall have reasonable grounds to believe that the offense charged has been committed.

Complainant
responsible for
costs.

SEC. 24. When the offense charged is a misdemeanor, the justice, before issuing the warrant, may at his discretion require the complainant to acknowledge himself responsible for costs in case the complaint shall be dismissed, which acknowledgment of security for costs shall be entered on the docket, and the justice, on dismissal, may, if in his opinion the complaint was without probable cause, enter a judgment against such complainant for the costs made thereon; and in case said justice shall consider such complainant wholly irresponsible, such justice may in his discretion, refuse to issue any warrant, unless the complainant procure some responsible security, to the satisfaction of such justice for said costs in case of such dismissal, and said security shall acknowledge himself so bound, and the justice shall enter it on his docket.

Contents of
warrant.

SEC. 25. The warrant shall be directed to any constable of the county, and, reciting the accusation, shall command the officer to forthwith take the accused and bring him before the justice issuing the warrant, or some other justice having cognizance of the case, to be dealt with according to the law.

Arrest in any
other county.

SEC. 26. If any person, charged as aforesaid, with the commission of an offense, shall flee from justice, it shall be lawful for the officer in whose hands the warrant for such person has been placed, to pursue and arrest such person in any other county of this territory, and him to convey before the justice issuing the warrant, or any other justice having cognizance of the case, of the county where such offense was committed.

When a person
absconds.

SEC. 27. If any person charged with an offense, shall abscond or remove from the county in which such offense is alleged to have been committed, it shall be lawful for any justice of the county, in which such person may be found, to

issue a warrant for the arrest and removal of such person to the county in which the offense is alleged to have been committed, to be there delivered to any justice of such county, who shall cause the person so delivered, to be dealt with according to law, and the warrant so issued shall have the same force and effect as if issued from the county in which such offense is alleged to have been committed.

SEC. 28. In executing a warrant for the arrest of a Breaking of doors. person charged with an offense, or a search warrant, the officer may break open any outer or inner door or window of a dwelling house or other building, if, after notice of his office and purpose, he be refused admittance. But this section is not intended to authorize any officer executing a search warrant to enter any house or building not described in the warrant.

TITLE IV.

Examination.

SEC. 29. Whenever any person has been arrested under a warrant as provided in the preceding article, it shall be the duty of the officer making the arrest, to take the person so arrested before the proper justice; and the warrant by virtue of which the arrest was made, with a proper return indorsed thereon and signed by the officer, shall be delivered to such justice. Person arrested taken before justice.

SEC. 30. If it shall become necessary, for any just Adjournment. cause, to adjourn the examination of any person brought before the justice, as set forth in the preceding section, it shall be lawful for such justice to adjourn such examination and commit such person from time to time for safe keeping to the jail of the county, until the cause of delay be removed, and no longer; *Provided*, The whole time of such confinement in the jail shall not exceed four days; and *provided*, also, that the officer, having in custody any such person, may, by the written order of such justice, detain such person in custody in some secure and convenient place other than the jail, to be designated by said justice in his order, not exceeding four days. And it shall be the duty of the officer Provide

in whose custody any person shall be detained as above, to provide for the sustenance of such prisoner while in custody.

Recognizance.

SEC. 31. When it shall become necessary to adjourn any trial according to the provisions of the preceding section, the person accused may enter into a recognizance before the justice with good and sufficient security, to be approved by the justice in such amount as he shall deem reasonable, conditioned for the appearance of such person before said justice, at a place and day and hour in said recognizance specified; *Provided*, That such adjournment shall not be for a longer time than twenty days without the consent of the accused; and, *Provided*, That no person shall be let to bail, who is charged with an offense not bailable under the laws of this territory.

Proviso.

Proviso.

Failure to appear.

SEC. 32. If any person recognized agreeably to the preceding section shall fail to appear at the time appointed, or shall otherwise fail to comply with the conditions of the recognizance, the justice shall declare the same forfeited, and transmit a transcript of his proceedings in the case, together with the recognizance to the clerk of the proper court; and such proceedings shall be had thereon by said court as shall be deemed expedient, and as if the recognizance had been taken in said court.

Plea of "guilty."

SEC. 33. When any person accused of a misdemeanor shall be brought before a justice, on the complaint of a party injured, and shall plead guilty to the charge, the justice may, at his discretion, sentence the person to such punishment as he may deem proper, within the limits of the provision defining the offense, and order the payment of costs, or require him to enter into a recognizance to appear at the proper court as provided in this title. If the complaint be not by the party injured, the defendant shall be recognized so to appear.

Not "guilty."

SEC. 34. When the accused is brought before the justice and there is no plea of guilty, he shall as soon as may be, in the presence of the accused, inquire into the complaint.

Witnesses kept separate.

SEC. 35. The justice, if requested, or if he see good cause therefor, shall order that the witnesses on both sides

shall be examined, each one separate from all the others, and that the witnesses for, may be kept separate from the witnesses against the accused during the examination.

SEC. 36. If, upon the whole examination, it appears No offense. that there has been no offense committed, or that there is not probable cause for holding the prisoner to answer the offense, he shall be discharged.

SEC. 37. If it shall appear that an offense has been Witnesses recognized. committed, and there is probable cause to believe the prisoner guilty, the justice shall bind by recognizance such witnesses against the prisoner, as he shall deem necessary, and such witnesses on part of the defense as the defendant may request, to appear and testify before the court having cognizance of the offense, on the first day of the next term thereof, and not to depart from such court without leave. If the court is in session, they shall be recognized to appear forthwith, but no recognizance requiring such witnesses to appear at the next term shall be invalid from the fact that no court is in session.

SEC. 38. When the justice is satisfied that there is Sureties. reason to believe that any such witness will not perform the condition of his own recognizance, he may, when the offense charged is a felony, order him to recognize with sufficient sureties.

SEC. 39. Any person may recognize for a married Married women and minors. woman or minor to appear as a witness, or the justice may take the recognizance of either in a sum not exceeding one hundred dollars, which shall be valid notwithstanding the disability of coverture or minority.

SEC. 40. If any witness so required to enter into a Refusal to comply. recognizance, refuse to comply with such order, the justice shall commit him or her to jail until he or she comply with such order, or be otherwise discharged according to law.

SEC. 41. It shall be the duty of every justice in criminal proceedings to keep a docket thereof, as in civil cases. Docketed. All recognizances taken under this title, together with a transcript of the proceedings where the defendant is held to answer, shall be certified and returned forthwith to the

clerk of the court at which the prisoner is to appear. The transcript shall contain an accurate bill of the costs that have accrued, and the items composing the same.

TITLE V.

Bail.

Terms of
recognizance.

SEC. 42. If the offense for which the prisoner is held to answer be bailable, and the prisoner offer sufficient bail, a recognizance shall be taken for his appearance to answer the charge before the court in which the same is cognizable, on the first day of the next term thereof, and not to depart such court without leave, and thereupon he shall be discharged.

Court in ses-
sion.

SEC. 43. If the court to which the accused is recognized to appear is in session, the condition of the recognizance shall be that he shall appear at such court forthwith, and not depart therefrom without leave; but no recognizance requiring the accused to appear at the next term shall be rendered invalid by the fact that the court is in session.

Offense of
higher grade.

SEC. 44. If, on the examination, it shall appear to the justice that the accused has committed an offense of a higher grade than that charged, he may be held to answer therefor.

Not bailable.

SEC. 45. If the offense be not bailable, or sufficient bail be not offered, the prisoner shall be committed to the jail of the county in which the same is to be tried, there to remain until he be discharged by due course of law.

Transcript en-
tered by clerk.

SEC. 46. When a transcript or recognizance shall be returned to the clerk, it shall be his duty to enter the cause upon the docket of the court, together with the date of the filing of the transcript and recognizance, the date and amount of the recognizance, the names of the sureties and the costs; whereupon the same shall be considered as of record in such court, and proceeded on by process issuing out of said court, in the same manner as if such recognizance had been entered into before such court, and the recognizance shall be recorded in full in the journal of said court, in the same manner as recognizances taken in said court.

SEC. 47. When any person, charged with the commission of any bailable offense, shall be confined in jail, whether committed by warrant under the hand and seal of any judge or justice, or by the sheriff or coroner, under any warrant upon indictment found, it shall be lawful for any judge of the supreme court within his district, or probate judge within his county, to admit such person to bail, by recognizing such person in such sum and with such sureties as to such judge shall seem proper, conditioned for his appearance before the proper court, to answer the offense wherewith he may be charged; and for taking such bail the judge may, by his special warrant, under his hand and seal, require the sheriff or jailor to bring such accused before him at the court house of the proper county, or some other place named by him, at such time as in such warrant, the judge may direct.

Who may admit to bail.

SEC. 48. In all cases, when a judge or examining court shall recognize a prisoner under the provisions of the four preceding sections, he shall forthwith deposit with the clerk of the proper court the recognizance so taken, and also a warrant directed to the jailor, requiring him to discharge the prisoner.

Recognizance deposited with clerk.

SEC. 49. When any sheriff or other officer shall be charged with the execution of a warrant issued on any indictment for a misdemeanor, he shall, during the vacation of the court from which the writ issued, have authority to take the recognizance of the person so indicted, together with sufficient sureties, resident and property holders in the county from which such writ was issued, in a sum of not less than fifty nor more than five hundred dollars, conditioned for the appearance of such person on the first day of the next term of such court.

Sheriff may take recognizance.

SEC. 50. The sheriff or other officer shall return the said writ according to the command thereof, with the name of the surety or sureties, together with the recognizance taken as aforesaid, and the recognizance so taken and returned shall be filed and recorded by the clerk of the court to which the same was returned, and may be proceeded

Sheriff to return writ, &c.

on in the same way as if such recognizance had been taken in said court during term time.

Indicted for
felony.

SEC. 51. When any person shall have been indicted for a felony, and the person so indicted shall not have been arrested or recognized to appear before the court, the court may, at their discretion, make an entry of the cause on their journal, and may order the amount in which the party indicted may be recognized for his appearance by any officer charged with the duty of arresting him.

Clerk to in-
dorse on indict-
ment

SEC. 52. The clerk issuing a warrant on such an indictment, shall indorse thereon the sum in which the recognizance of the accused was ordered, as aforesaid, to be taken.

Officer to take
recognizance.

SEC. 53. The officer charged with the execution of the warrant aforesaid, shall take the recognizance of the party accused in the sum ordered as aforesaid, together with good and sufficient sureties conditioned for the appearance of the accused at the return of the writ, before the court out of which the same issued, and such officer shall return such recognizance to said court to be recorded and proceeded on, as provided in this article.

Surrender of
defendant.

SEC. 54. When any person who is surety in a recognizance for the appearance of any defendant before any court in this territory desires to surrender the defendant, he shall, by delivering the said defendant in open court, be discharged from any further responsibility on said recognizance; and the said defendant shall be committed by the court to the jail of the county, unless he shall give a new recognizance, with good and sufficient sureties, in such amount as the court may determine, conditioned as the original recognizance.

To deliver up
defendant in va-
cation.

SEC. 55. When the surety desires to deliver up the defendant in vacation, the surrender shall be made of such defendant to any judge of the court before which he shall have been recognized to appear, or to the sheriff, or to the probate judge of the proper county, and shall be made in the court house of such county; and, upon such surrender being made, it shall be lawful for the judge to make out,

sign and deliver to the sheriff, or some constable of the county, a warrant for the commitment of such defendant to the jail of the county, unless he shall immediately enter into a recognizance, with sufficient sureties, according to the original recognizance, which recognizance said judge shall take and approve, and return to the clerk of the court to which the defendant was originally recognized, to be proceeded on, the same as if it had been taken in term time.

SEC. 56. All recognizances taken during vacation by any justice or other officer authorized to take them, shall be signed and sealed by the parties, and certified to by the officer taking the same. Recognizances taken in vacation

SEC. 57. When any person under recognizance in any criminal prosecution, either to appear in answer or testify in any court, shall fail to perform the condition of such recognizance his default shall be recorded, and the recognizance forfeited in open court. Default and forfeiture.

SEC. 58. Whenever such recognizance shall have been forfeited, as aforesaid, it shall be the duty of the prosecuting attorney of the county in which the recognizance was taken, to prosecute the same by civil action for the penalty thereof; and such action shall be governed by the provisions of the code of civil procedure, so far as the same may be applicable. Prosecution for penalty.

SEC. 59. The court in which the action for the penalty of any forfeited recognizance is brought, may remit or reduce any part or the whole of such penalty, and may render judgment thereon according to the circumstances of the case, and the situation of the party, and upon such terms and conditions as to such court shall seem just and reasonable. Penalty remitted.

SEC. 60. Whenever any judgment shall have been rendered against the defendants for the whole or any part of the penalty of a forfeited recognizance, as aforesaid, the court rendering said judgment shall have power to remit or reduce the amount thereof, when it shall be made to appear that after the rendition thereof, the accused had been arrested and surrendered to the proper court to be tried on such charge. Accused arrested after rendition of judgment.

SEC. 61. No action brought on any recognizance shall

Action not
barred or de-
feated.

be barred or defeated, nor shall judgment thereon be reversed by reason of any neglect or omission to note or record the default, nor by reason of any defect in the form of the recognizance, if it sufficiently appear from the tenor thereof, at what court the party or witness was bound to appear, and that the court or officer before whom it was taken was authorized by law to require and take such recognizance.

TITLE VI.

Of the Grand Jury and its Proceedings.

Two lists.

SEC. 62. Before the first day of each term of a court at which a grand jury shall be summoned to appear, the clerk of such court shall make out two lists, on which he shall enter the names of all the persons who appear by the returns of the justice to have been either committed or bailed for an offense during the vacation of such court, the name of the justice who committed or bailed, and distinguishing whether such person was committed or bailed; one of these lists shall be delivered by the judge to the foreman of the grand jury, and the other, together with all the transcripts and other documents returned by the justices, shall be delivered to the prosecuting attorney.

Number of
jurors.

SEC. 63. When the grand jury shall be impanelled, the court shall appoint one of the number foreman; such jury shall consist of not more than sixteen nor less than twelve members.

Oath of fore-
man.

SEC. 64. When the foreman shall be appointed, an oath or affirmation shall be administered to him in the following words:

“You, as foreman of this grand inquest, do solemnly swear (or affirm) that you will diligently inquire and true presentment make of all such matters and things as shall be given you in charge, or otherwise come to your knowledge touching the present service. The counsel of the territory, your own and your fellows you shall keep secret, unless called on in a court of justice to make disclosures. You shall present no person through malice, hatred or ill-will, nor

shall you leave any person unrepresented through fear, favor or affection, or for any reward or hope thereof; but in all your presentments you shall present the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding."

SEC. 65. Thereupon, the following oath (or affirmation) shall be administered to the other grand jurors:

Oath of Jurors.

"The same oath which A. B., your foreman, hath now taken before you on his part, you and each of you shall well and truly observe and keep on your respective parts."

SEC. 66. The grand jury, after being sworn, shall be charged as to their duty by the judge, who shall call their attention particularly to the obligation of secrecy which their oaths impose, and to such offenses as he is by law required to specially charge. After the charge of the court the grand jury shall retire with the officer appointed to attend to them, and shall proceed to inquire of and present all offenses whatever, committed within the limits of the county, in and for which they were impanelled and sworn or affirmed.

Charge of Judge.

SEC. 67. The prosecuting attorney, or the assistant prosecuting attorney, shall be allowed at all times to appear before the grand jury for the purpose of giving information relative to any matter cognizable by them, or giving them advice upon any legal matter when they may require it, and he may be permitted to interrogate witnesses before them when they or he shall deem it necessary; but no such attorney, nor any other person, shall be permitted to be present during the expression of their views or the giving of their votes on any matter before them.

Prosecuting attorney may appear before grand jury.

SEC. 68. Whenever required by the grand jury, or the prosecuting attorney, the clerk of the court in which such jury is impanelled, shall issue subpoenas and other process to bring witnesses to testify before such grand jury.

Subpoenas.

SEC. 69. Before any witnesses shall be examined by the grand jury, an oath or affirmation shall be administered to him by the foreman.

Oath to witnesses.

SEC. 70. If any witness appearing before a grand

Refusal to answer.

jury shall refuse to answer any interrogatories during the course of his examination, the fact shall be communicated to the court in writing, in which the question refused to be answered shall be stated, together with the excuse for the refusal, if any be given by the person interrogated; and the court shall thereupon determine whether the witness is bound to answer or not, and the grand jury shall be immediately informed of the decision.

Brought into court.

SEC. 71. If the court determine that the witness is bound to answer, and he persists in his refusal, he shall be brought before the court, who shall proceed in the same manner as if the witness had been interrogated and refused to answer in open court.

Sickness, &c., of a grand juror.

SEC. 72. In case of the sickness, death, discharge or non-attendance of any grand juror, after the grand jury shall be affirmed or sworn, it shall be lawful for the court, at their discretion, to cause another to be sworn or affirmed in his stead.

New grand jury.

SEC. 73. After the discharge of the grand jury, it shall be lawful for the court when it shall be deemed necessary, to order the sheriff to call together a new grand jury from the bystanders or neighboring citizens of sixteen good and lawful men, having the qualifications of grand jurors, who shall be returned and sworn or affirmed, and shall proceed in the same manner in all respects as provided by law in respect to grand juries.

Grand jurors not to disclose.

SEC. 74. No grand juror or officer of the court shall disclose that an indictment has been found against any person not in custody or under bail, except by the issuing of process until the indictment is filed and the case docketed.

Grand jurors not to state how they voted.

SEC. 75. No grand juror shall be allowed to state or testify in any court in what manner he or other members of the grand jury voted on any question before them, or what opinion was expressed by any juror in relation to such question.

Twelve to concur.

SEC. 76. At least twelve of the grand jurors must concur in the finding of an indictment. When so found the

foreman shall indorse on such indictment the words "A True Bill," and subscribe his name thereto as foreman. Twelve jurors shall be competent to act, and if but twelve, all must concur in finding a bill of indictment, and the prosecuting attorney shall sign the bill.

SEC. 77. No indictment for any misdemeanor shall be found a true bill by any grand jury, unless the name of the prosecuting witness shall be indorsed thereon, except such bill be found upon testimony sworn and sent to the grand jury by order of the court, at the request of the prosecuting attorney or of the grand jury, in which case the fact that the bill was so found, shall be indorsed on the bill, instead of the name of the prosecutor.

SEC. 78. In all cases where the name of the prosecuting witness is indorsed on the bill, and the same is found a true bill by the grand jury, and upon trial the defendant is acquitted, the prosecuting witness shall be liable for costs, if it shall appear that the prosecution was malicious or without justifiable cause.

SEC. 79. The grand jury shall, once at each term of the court at which they may be in attendance, visit the county jail, examine its state and condition, and inquire into the discipline and treatment of the prisoners, their habits, diet and accommodations; and it shall be their duty to report to said court, in writing. [if] the regulations of the county jails have been violated, pointing out particularly in what said violation, if any, consists.

SEC. 80. Indictments found by a grand jury shall be presented by their foreman to the court in the presence of the jury, and shall be filed with the clerk, who shall indorse thereon the day of their filing, and shall enter each case upon the appearance docket, and also upon the trial docket of the term, as soon as the parties indicted have been arrested.

SEC. 81. Any person held in jail, charged with an indictable offense, shall be discharged if he be not indicted at the term of the court at which he is held to answer, unless it shall appear to the satisfaction of the court that the

witnesses on the part of the territory have been enticed or kept away, or are detained and prevented from attending court by sickness or some inevitable accident.

TITLE VII.

Indictments and Process thereon.

Two or more
indictments.

SEC. 82. If there be at any time pending against the same defendant two or more indictments for the same criminal act, the prosecuting attorney shall be required to elect upon which he will proceed, and upon trial being had thereon, the remaining indictment or indictments shall be quashed.

Receiver of
stolen goods.

SEC. 83. Whenever any person shall be liable to prosecution as the receiver of any personal property that shall have been feloniously stolen, taken or embezzled, he may be indicted in any county where he received or had such property, notwithstanding the theft was committed in another county.

No indictment
invalid.

SEC. 84. No indictment shall be deemed invalid, nor shall the trial, judgment or other proceedings be stayed, arrested or in any manner affected.

First, By the omission of the words "with force and arms," or any words of similar import; or,

Second, By omitting to charge any offense to have been contrary to a statute or statutes; or,

Third, For the omission of the words, "as appears by the record," nor for omitting to state the time at which the offense was committed, in any case where time is not of the essence of the offense; nor for stating the time imperfectly; nor for want of a statement of the value or price of any matter or thing, or the amount of damages or injury in any case where the value or price, or the amount of damages or injury is not of the essence of the offense; nor for the want of an allegation of the time and place of any material fact, when time and place have once been stated in the indictment; nor that dates and numbers are represented by figures, nor for an omission to allege that the grand jurors were impanelled, sworn or charged; nor for any surplusage or repugnant

allegation, when there is sufficient matter alleged to indicate the crime or person charged; nor for want of the averment of any matter not necessary to be proved; nor for any other defect or imperfection which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

SEC. 85. Whenever, on the trial of any indictment for any offense, there shall appear to be any variance between the statement in such indictment, and the evidence offered in proof thereof in the christian name or surname, or both christian name and surname, or other description whatever, of any person whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, such variance shall not be deemed ground for an acquittal of the defendant, unless the court before which the trial shall be had, shall find that such variance is material to the merits of the case, or may be prejudicial to the defendant.

Variance, not ground for acquittal.

SEC. 86. In any indictment for manslaughter, it shall not be necessary to set forth the manner in which, or the means by which the death was caused, but it shall be sufficient to charge that the defendant did unlawfully kill and slay the deceased.

In indictment for manslaughter

SEC. 87. In any indictment for falsely making, altering, forging, printing, photographing, uttering, disposing of or putting off any instrument, it shall be sufficient to set forth the purport and value thereof.

Forging, &c.

SEC. 88. In any indictment for engraving or making the whole or any part of any instrument, matter or thing, or for using or having the unlawful custody or possession of any plate or other material upon which the whole or any part of any instrument, matter or thing, shall have been engraved or made, or for having the unlawful custody or possession of any paper upon which the whole or any part of any instrument, matter or thing, shall have been made or printed, it shall be sufficient to describe such instrument, matter or thing, by any name or designation by which the same may be usually known.

Engraving, &c

SEC. 89. In all other cases, whenever it shall be

In other cases.

necessary to make any averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof.

Intent to defraud.

SEC. 90. It shall be sufficient in any indictment where it shall be necessary to allege an intent to defraud, to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person or body corporate, and on the trial of any such indictment, it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged, with the intent to defraud.

Indictment, when sufficient.

SEC. 91. When any offense shall be committed upon or in relation to any property, belonging to several partners or owners, the indictment for such offense shall be deemed sufficient, if it allege such property belonged to any [one] or more of such partners or owners, without naming all of them.

Election.

SEC. 92. When an offense shall be committed in relation to any election, an indictment for such offense shall be deemed sufficient if it allege that such election was authorized by law, without stating the names of the officers holding the election, or the persons voted for, or the offices to be filed at such election.

Larceny.

SEC. 93. An indictment for larceny may contain also a count for obtaining the same property by false pretenses, or a count for embezzlement thereof, and for receiving or concealing the same property, knowing it to have been stolen; and the jury may convict of either offense, and may find all or any of the persons indicted, guilty of either of the offenses charged in the indictment.

Averment as to money, &c.

SEC. 94. In every indictment in which it shall be necessary to make any averment as to any money, gold dust, retort of gold or silver current by custom and usage as money, or bank bills or notes, United States treasury notes, postal and fractional currency, or other bills, bonds, or notes issued by lawful authority and intended to pass and

circulate as money, it shall be sufficient to describe such money or bills, notes, currency or bonds, gold dust or retort, current by custom or usage, simply as money, without specifying any particular coin, note, bill or bond; and such allegation shall be sustained by proof of any amount of coin, or of any such note, bill, currency or bond, although the particular species of coin of which such amount was composed, or the particular nature of such note, bill, currency or bond, shall not be proved.

SEC. 95. A warrant may be issued in term time, or in vacation of court, on an indictment found in any county, and when directed to the sheriff of the county in which such indictment was found, it shall be lawful for such officer to arrest the accused named in such warrant, in any county where he may reside, and commit him to jail or hold him to bail as provided in this code.

Warrant may be issued in term time, &c.

SEC. 96. When the party accused shall reside out of the county in which such indictment was found, it shall be lawful to issue a warrant thereon, directed to the sheriff of the county where the accused shall reside or may be found; and it shall be the duty of such officer to arrest the accused and convey him to the county from which such writ was issued, and there commit him to the jail of said county, or hold him to bail, as provided in the preceding section.

When party accused resides out of county.

TITLE VIII.

Of Pleas to Indictment and Trial.

SEC. 97. It shall be the duty of the clerk of the court in which an indictment for felony is filed, within three days after the same shall have been filed, to make a copy thereof, and deliver the same to the sheriff, whose duty it shall be to serve the same on the accused when in jail, and if on bail, said copy may be given to the defendant or his attorney, and no one shall be, without his assent, arraigned or called on to answer to any indictment for felony, until one day shall have elapsed after the copy has been served upon him as aforesaid.

Duty of clerk.

SEC. 98. After a copy of the indictment has been served upon the defendant, the accused shall be brought

Court to assign counsel.

into court; and if he be without counsel and unable to employ any, it shall be the duty of the court to assign him counsel, at his request, not exceeding two, who shall have free access to the accused at all reasonable hours.

Exceptions.

SEC. 99. Thereupon the court shall allow the accused a reasonable time to examine the indictment and prepare exceptions thereto.

Accused may except.

SEC. 100. The accused may except to an indictment by,
First, A motion to quash.

Second, A plea in abatement.

Third, A demurrer—a plea to the jurisdiction of the court.

Motion to quash.

SEC. 101. A motion to quash may be made in all cases when there is a defect apparent upon the face of the record, including defects in the form of the indictment or in the manner in which an offense is charged.

Plea in abatement.

SEC. 102. A plea in abatement may be made when there is a defect in the record, which is shown by facts extrinsic thereto.

Accused may demur.

SEC. 103. The accused may demur when the facts stated in the indictment do not constitute an offense punishable by the laws of this territory, or when the intent is not alleged, when proof of it is necessary to make out the offense charged.

Motion to quash in favor of accused.

SEC. 104. When a motion to quash, or a plea in abatement has been adjudged in favor of the accused, he may be committed or held to bail in such sum as the court may require for his appearance at the first day of the next term of said court, unless the grounds upon which the same was quashed are such that a new indictment cannot cure the defect.

Where accused waived defects.

SEC. 105. The accused shall be taken to have waived all defects which may be excepted to by a motion to quash, or a plea in abatement, by demurring to an indictment, or pleading in bar or not guilty.

Plea in abatement.

SEC. 106. If the accused shall plead in abatement that he is not indicted by his true name, he must plead what his true name is, which shall be entered on the minutes of

the court, and after such entry, the trial and all other proceedings on the indictment shall be had against him by that name, referring also to the name by which he is indicted, in the same manner in all respects as if he had been indicted by his true name.

SEC. 107. To any plea in abatement, the prosecuting attorney may demur if it is not sufficient in substance, or he may reply, setting forth any facts which may show that there is no defect in the record as charged in the plea. Prosecuting attorney may demur.

SEC. 108. After a demurrer to an indictment has been overruled, the accused may plead "not guilty" or in bar. Accused may plead &c.

TITLE IX.

Arraignment—Change of Venue.

SEC. 109. The accused shall be arraigned by reading to him the indictment, and the court shall ask him, "are you guilty, or not guilty, of the offense therein charged." Accused, how arraigned.

SEC. 110. The accused may then offer a plea in bar to the indictment that he has before had judgment of acquittal, or been convicted, or been pardoned for the same offense; and to this plea the prosecuting attorney may reply that there is no record of such acquittal or conviction, or that there has been no pardon; and on the trial of such issue to a jury, the accused must produce the record of such conviction or acquittal, or the pardon, and prove that he is the same person charged in the record or mentioned in the pardon; and shall be permitted to adduce such other evidence as may be necessary to establish the identity of the offense. May offer plea in bar.

SEC. 111. No plea in bar or abatement shall be received by the court, unless it be in writing, signed by the accused, and sworn to before some competent officer. Plea in bar.

SEC. 112. If the issue on the plea in bar be found against the defendant, or if upon the arraignment the accused offer no plea in bar, he shall answer the question propounded by the court, by pleading "guilty" or "not guilty;" but if he answer evasively, or stand mute, he shall be taken to have pleaded "not guilty." When found against defendant.

When accused
plead guilty.

SEC. 113. If the accused plead "guilty," the plea shall be recorded on the indictment and in the records of the court, and the accused shall be committed until sentenced.

Not guilty.

SEC. 114. If the accused plead "not guilty," the plea shall be entered on the indictment, and the prosecuting attorney shall, under the direction of the court, designate a day for trial, which shall be a day of term at which the plea is made, unless the court for good reasons continue the case to a subsequent term, upon the application of the defendant, or the prosecuting attorney, and in no case shall a defendant be required to swear that he is "not guilty," on an application for a continuance.

Criminal cases,
where tried.

SEC. 115. All criminal cases shall be tried in the county where the offense was committed, unless it shall appear to the court by affidavits that a fair and impartial trial cannot be had therein for any cause; in which case the court may direct the person accused to be tried in some adjoining county in the same or adjoining district, where the cause alleged for removal does not exist. If the affidavit shall allege the prejudice of the judge as a ground for removal, the change of venue shall be allowed, and the case go to another district; *Provided*, That if the objection be made to the judge only, the court may, for the convenience of parties, request the judge of another district to try said cause in the county in which such action may be pending.

When venue is
changed.

SEC. 116. When the venue is changed to an adjoining county, the clerk of the county in which the indictment was found, shall make out a certified transcript of all the proceedings in the case, which, together with the original indictment, he shall transmit to the clerk of the court to which the venue is changed, and the trial shall be conducted in all respects as if the offender had been indicted in the county to which the venue has been changed. The costs accruing from a change of venue shall be paid by the county in which the indictment was found.

Where court
has ordered
change of venue.

SEC. 117. When a court has ordered a change of venue, a warrant shall be issued by the clerk, directed to the sheriff,

commanding him safely to convey the prisoner to the jail of the county where he is to be tried, there to be safely kept by the jailor thereof until discharged by due course of law.

SEC. 118. When a change of venue is allowed, the court shall recognize the witnesses on the part of the state to appear before the court in which the prisoner is to be tried.

When allowed.

TITLE X.

Of Juries.

SEC. 119. In all criminal cases the jury summoned and impanelled according to the laws in force, relating to the summoning or impanelling of juries in other cases, shall try the accused.

Jury summoned, &c.

SEC. 120. Every person charged with the commission of an offense, the punishment whereof is capital, may challenge twenty persons returned as jurors peremptorily. In all cases of felony, not punishable capitally, the defendant shall have but ten peremptory challenges, and in cases of misdemeanors, but five.

Challenges.

SEC. 121. The prosecuting attorney shall have six peremptory challenges in capital cases, three in other felonies, and none in misdemeanors. Challenge for cause lies with both the defendant and prosecutor. The court shall in all cases, when the punishment of death does not follow conviction, try the validity of such challenge. In capital cases, three triers, with the qualifications of juries, to be appointed by the court, who shall be sole judges of the fact whether the juror stands impartial between the defendant and the people, and such triers shall examine the party presented, as sworn upon his oath, and may receive other evidence if necessary to aid them in arriving at a proper conclusion as to such juror's competency.

Ditto.

Triers, duties of.

SEC. 122. Except as otherwise provided, the prosecuting attorney and every defendant may peremptorily challenge two of the panel, and any of the panel for cause, the validity of which the court shall try.

Challenges.

SEC. 123. The following shall be good cause for challenge to any person called as a juror on any indictment:

Causes for challenge.

First, That he was a member of the grand jury which found the indictment.

Second, That he has formed or expressed an opinion as to the guilt or innocence of the accused, or is biased or prejudiced for or against the accused.

Third, In indictments for an offense, the punishment whereof is capital, that his opinions are such as to preclude him from finding the accused guilty of an offense punishable with death.

Fourth, That he is a relation within the fifth degree to the person alleged to be injured, or attempted to be injured by the offense charged, or to the person on whose complaint the prosecution was instituted, or to the defendant.

Fifth, That he has served on a petit jury which was sworn in the same cause against the same defendant, and which jury either rendered a verdict which was set aside, or was discharged after hearing the evidence.

Sixth, That he has served as a juror in a civil case brought against the defendant for the same act.

Seventh, That he has been subpoenaed as a witness in the case.

Eight, The same challenges for cause shall be allowed in criminal prosecutions, that are allowed to parties in civil cases.

When tried by
court.

SEC. 124. All challenges, except in capital cases as herein otherwise provided, for cause, shall be tried by the court on the oath of the person challenged, or on other evidence, and such challenge shall be made before the jury is sworn, and not afterwards.

When allowed.

SEC. 125. If two or more persons be put on trial at the same time, each must be allowed his separate peremptory challenge.

Oath.

SEC. 126. When all challenges have been made, the following oath shall be administered:

"You shall well and truly try, and true deliverance make, between the people of the territory of Wyoming and the prisoner at the bar (giving his name); so help you, God."

Affirmation.

SEC. 127. Any juror shall be allowed to make affirma-

tion, and the words, "This you do as you shall answer under the pains and penalties of perjury," shall be substituted instead of the words, "So help you, God."

TITLE XI.

Of Evidence.

SEC. 128. The defendant in all criminal cases shall be permitted, if he so desire, to make a statement to the jury at the close of the evidence for the defense.

Defendant permitted, &c.

SEC. 129. In the trial of all indictments, informations, complaints and other proceedings, against persons charged with the commission of crimes or offenses, the person so charged shall, at his own request, but not otherwise, be allowed to make his statement, nor shall the neglect or the refusal to make a statement create any presumption against him, nor shall any reference be made to, nor any comment upon, such neglect or refusal.

Statement, when allowed.

SEC. 130. In all criminal cases it shall be the duty of the clerk, upon a precipe being filed, to issue writs of subpoena for all witnesses named therein, directed to the sheriff of his county, or of any county of the territory where the witnesses reside or may be found, which shall be served and returned as in other cases, and such sheriff by writing indorsed on said writs, may depute any disinterested person to serve and return the same.

Clerk to issue subpoenas.

Sheriff may depute.

SEC. 131. If the subpoena be served by such special deputy, it shall be his duty after serving the same, to return thereon the manner in which the same was served; and also make oath or affirmation to the truth of said return, before some person competent to administer oaths; which shall be indorsed on such writ, and the same shall be returned according to the command thereof, by the person serving the same, through the post office or otherwise.

When served by deputy.

SEC. 132. Except as otherwise provided, the provisions of the code of civil procedure, relative to compelling the attendance and testimony of witnesses, their examination and administering of oaths and affirmations, and proceedings for contempt to enforce the remedies and protect the rights

Witnesses.

of parties, shall extend to criminal cases, so far as they are in their nature applicable.

Commission to
examine.

SEC. 133. When any issue of fact is joined on any indictment, and any material witness for the defendant resides out of the territory, or residing within the territory, is sick or infirm, or is about to leave the territory, such defendant may apply in writing to the court in term time, or to the judge thereof in vacation, for a commission to examine such witness upon interrogatories thereto annexed, and such court or judge may grant the same, and order what and for how long a time notice shall be given the prosecuting attorney before the witness shall be examined.

Proceedings,
&c.

SEC. 134. The proceedings in taking the examination of such witness and returning it to court, shall be governed in all respects as the taking of depositions in civil cases.

Where two or
more are in-
dicted.

SEC. 135. When two or more persons shall be indicted together, the court may, at any time before the defendant has gone into his defense, direct any one of the defendants to be discharged, that he may be a witness for the territory. An accused party may, also, when there is not sufficient evidence to put him upon his defense be discharged by the court; or if not discharged by the court, shall be entitled to the immediate verdict of the jury, for the purpose of giving evidence for others accused with him; such orders of discharge in either case, shall be a bar to another prosecution for the same offense.

When accused
may be dis-
charged.

Seduction.

SEC. 136. In trials for taking a woman away with intent to force her to be married or defiled, and for seduction, and for seduction for the purpose of prostitution, no conviction shall be had on the evidence of the female offended against, unsupported by other evidence.

Inciting per-
u.y.

SEC. 137. In trial for procuring or inciting another to commit perjury, though perjury be not committed, no conviction shall be had on the evidence of the person attempted to be influenced, unsupported by other testimony.

Treason.

SEC. 138. In trials for treason, no evidence shall be given of any overt act that is not expressly laid in the indictment; and no conviction shall be had upon any

indictment for said offense, unless one or more overt acts be expressly alleged therein.

SEC. 139. In trials for conspiracy, in cases where an overt act is required by law to consummate the offense, no conviction shall be had unless one or more overt acts be expressly alleged in the indictment, nor unless one or more of the acts so alleged be proved on trial ; but other overt acts not alleged in the indictment may be given in evidence on the part of the prosecution. Conspiracy.

TITLE XII.

Miscellaneous Provisions.

SEC. 140. After the jury has been impanelled and sworn, the trial shall proceed in the following order : Order of trial.

First, The counsel for the territory must state the case of the prosecution, and may briefly state the evidence by which he expects to sustain it ;

Second, The defendant or his counsel may then state his defense, and may briefly state the evidence he expects to offer in support of it, or may wait until the evidence upon the part of the people is closed ;

Third, The territory must first produce its evidence, the defendant will then produce his evidence ;

Fourth, The territory will then be confined to rebutting evidence, unless the court, for good reasons, in furtherance of justice, shall permit it to offer evidence in chief ;

Fifth. When the evidence is concluded, either party may request instructions to the jury on points of law which shall be given or refused by the court ; which instructions shall be reduced to writing if either party require it ;

Sixth, When the evidence is concluded, unless the case is submitted without argument, the counsel for the territory shall commence, the defendant or his counsel follow, and the counsel for the territory conclude the argument to the jury ;

Seventh, The court, after the argument is concluded, shall immediately, and before proceeding with other business, charge the jury, which charge, or any charge given after the conclusion of the argument, shall be reduced to writing by

the court if either party request it, before the argument to the jury is commenced, and such charge or charges, or any other charge or instructions provided for in this section, when so written and given shall in no case be orally qualified, modified, or in any manner explained to the jury by the court; and all written charges and instructions shall be taken by the jury in their retirement, and returned with their verdict into court, and shall remain on file with the papers of the case.

Felony, when
tried.

Misdemeanor,
when tried.

When two or
more indicted.

Accused not
discharged.

Jury, may be
discharged.

Decision, ex-
ceptions.

SEC. 141. No person indicted for a felony shall be tried unless personally present during the trial. Persons indicted for a misdemeanor may, at their own request, by leave of the court, be put on trial in their absence. The request shall be in writing, and entered on the journal of the court.

SEC. 142. When two or more persons are indicted for a felony, each person so indicted shall, on application to the court for that purpose, be separately tried.

SEC. 143. When it shall appear at any time before verdict that a mistake has been made in charging the proper offense, the accused shall not be discharged if there appear to be good cause to detain him in custody; but the court must recognize him to answer to the offense on the first day of the next term of such court, and shall, if necessary, likewise recognize the witnesses to appear and testify.

SEC. 144. When a jury has been impanelled in a case contemplated by the preceding section, such jury may be discharged without prejudice to the prosecution.

SEC. 145. In all cases where a defendant shall feel himself aggrieved by any opinion or decision of the court, he may present his exceptions thereto, and it shall be the duty of the court to sign and seal the same, and the taking, preparing and signing and sealing of said bill shall be governed by the rules established in such matters in civil cases. Where the ground of exception is that the verdict is not sustained by sufficient evidence, or is contrary to law, and the court has overruled a motion for a new trial made on that ground, the bill of exception shall substantially set out the evidence. The bill of exceptions, when signed and

sealed, shall be made a part of the record, and shall have the same force and effect as in civil cases.

SEC. 146. The prosecuting attorney may take exceptions to any opinion or decision of the court during the prosecution of the cause; and the bill containing the exceptions upon being presented, shall, if it be conformable to the truth, be signed and sealed by the court, which shall be made [be] a part of the record, and be in all respects governed by the rules established as to bills of exceptions in civil cases, except as herein provided.

Prosecuting
attorney may
take.

SEC. 147. The prosecuting attorney may present such bill of exceptions to the supreme court, and apply for permission to file it with the clerk thereof, for the decision of such court upon the points presented therein; but prior thereto, he shall give reasonable notice to the judge who presided at the trial in which the bill was taken, of his purpose to make such application, and if the supreme court shall allow such bill to be filed, such judge shall appoint some competent attorney to argue the case against the prosecuting attorney, which attorney shall receive for his services a fee not exceeding one hundred dollars, to be fixed by such court, and to be paid out of the treasury of the county in which the bill was taken.

May present.

SEC. 148. If the supreme court shall be of the opinion that the questions presented should be decided upon, they shall allow the bill of exceptions to be filed and render a decision thereon.

Supreme court,
opinion.

SEC. 149. The judgment of the court in the case in which the bill was taken shall not be reversed, nor in any manner effected; but the decision of the supreme court shall determine the law to govern in any similar case which may be pending at the time the decision is rendered, or which may afterward arise in the territory.

Shall govern
in similar cases.

SEC. 150. If any person indicted for any offense and committed to prison, shall not be brought to trial before the end of the second term of the court having jurisdiction of the offense, which shall be held after such indictment found, he shall be entitled to be discharged, so far as relates to the

Accused, when
discharged.

offense for which he was committed, unless the delay shall happen on the application of the prisoner.

Date.

SEC. 151. If any person indicted for any offense, who has given bail for his appearance, shall not be brought to trial before the end of the third term of the court in which the cause is pending, held after such indictment is found, he shall be entitled to be discharged, so far as relates to such offense, unless the delay happen on his application, or be occasioned by the want of time to try such cause at such third term.

When prisoner is remanded.

SEC. 152. If, when application is made for the discharge of a defendant under either of the last two sections, the court shall be satisfied there is material evidence on the part of the territory, which cannot then be had, that reasonable exertions have been made to procure the same, and that there is just ground to believe that such evidence can be had at the succeeding term, the cause may be continued, and the prisoner remanded or admitted to bail, as the case may require.

TITLE XIII.

Of the Verdict and Judgment and Proceedings Thereon.

Proceedings for conduct of jury, &c.

SEC. 153. The proceedings provided by law in civil cases as to the conduct of the jury, the admonitions of the court, and the manner of returning the verdict, shall be had upon all trials on indictments, so far as proceedings may be applicable, and when it is not otherwise provided. In the trial of capital cases, the jury shall not be permitted to separate after being sworn until discharged by the court. In other felonies and misdemeanors, the separation of the jury may be permitted in the discretion of the court, until charged, after which no separation shall be allowed until discharged.

When not to separate.

In case jury is discharged.

SEC. 154. In case a jury shall be discharged on account of the sickness of a juror, or other accident or calamity requiring their discharge, or after they have been kept so long together that there is no probability of agreeing, the court shall, upon directing the discharge, order that the

reasons for such discharge shall be entered upon the journal; and such discharge shall be without prejudice to the prosecution.

SEC. 155. When the jury have agreed upon their verdict, they must be conducted into court by the officer having them in charge. Before the verdict is accepted, the jury may be polled at the request of either the prosecuting attorney or the defendant. When jury agree.

SEC. 156. When the indictment charges an offense against the property of another by larceny, embezzlement, or obtaining under false pretenses, the jury, on conviction, shall ascertain and declare in their verdict the value of the property stolen, embezzled or falsely obtained. The jury, on conviction shall.

SEC. 157. Upon an indictment for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged, and guilty of any degree inferior thereto, and upon an indictment for any offense, the jury may find the defendant not guilty of the offense, but guilty of an attempt to commit the same, when such an attempt is an offense. Jury may find not guilty.
But guilty of attempt.

SEC. 158. Before the sentence is pronounced, on the conviction of felony, the defendant shall be informed by the court of the verdict of the jury, and asked whether he has anything to say why judgment should not be pronounced against him. Before sentenced.

SEC. 159. If the defendant has nothing to say, or after he shall have made a statement, the court shall proceed to pronounce judgment as is provided by law. Court shall pronounce judgment.

SEC. 160. Whenever any person shall be convicted, by confession or otherwise, of any offense punishable either in whole or in part by fine, such person may move the court to hear testimony in mitigation of the sentence; and it shall be the duty of the court to hear such testimony at such time as may be suitable and proper, at the term of court at which the motion is made, or said court may continue the case to a future term, on the same terms as the case might have been continued before verdict or confession; and it shall be the duty of the prosecuting attorney to attend to When convicted by confession, or.

such proceedings on the behalf of the territory, and to offer any testimony necessary to give the court a true understanding of the case.

Execution suspended.

SEC. 161. When a person shall be convicted of felony, and shall give notice to the court of his intention to apply for a writ of error, or other process by which according to law, cases are taken to the supreme court, the court shall, on application of the person so convicted, suspend the execution of the sentence or judgment against him until the next term of the court.

Recognizance.

SEC. 162. No court shall suspend the execution of the sentence or judgment against any person convicted and sentenced for a misdemeanor, unless such person shall enter into recognizance, with such security as the court may require, conditioned that the person so convicted and sentenced shall appear at the next term of such court from term to term, until the case in error shall be determined, and abide the judgment or sentence of the court.

No writ of error allowed.

SEC. 163. If no writ of error, or other proceedings in error, be allowed by the next term of the court, after the sentence was pronounced, the court shall, at such term, carry the same into execution.

Judgment affirmed.

SEC. 164. If a writ of error or other mode of proceedings in error provided by law, be allowed, and on the hearing, [of] the judgment of the court in which the trial was had shall be affirmed, such court shall carry into execution the sentence pronounced against the defendant at the next term, after the judgment of affirmance is rendered.

Convict imprisoned.

SEC. 165. Whenever a person shall be convicted of a felony, and the judgment shall be suspended as aforesaid, it shall be the duty of the court to order the person so convicted into the custody of the sheriff, to be imprisoned until the case in error be disposed of. If a person so convicted shall escape, the clerk of the court, on application of the prosecuting attorney, shall issue a warrant stating such conviction, and commanding the sheriff of the county to pursue after such person into any county in the territory ;

Escape.

and said sheriff shall take such person and again commit him to the jail of such county.

SEC. 166. Every person sentenced to the penitentiary shall, within thirty days after his sentence, unless the execution thereof be suspended as aforesaid, be conveyed to the penitentiary of the territory by the sheriff of the county in which the conviction took place, and shall there be delivered into custody of the warden of said penitentiary, together with a copy of the sentence of the court ordering such imprisonment, there to be safely kept until the term of his confinement shall have expired, or he shall be pardoned. If the execution of the sentence be suspended, and the judgment is afterward affirmed, the defendant shall be conveyed to the penitentiary within thirty days after the court shall direct the sentence to be executed.

Conveyed to
penitentiary,
when.

SEC. 167. The sheriffs of the several counties of this territory, during the time they shall be employed in conveying to the penitentiary any person sentenced to imprisonment therein, shall have the same power and authority to secure him in any jail within the territory, and to demand the assistance of any sheriff, jailer or other person within this territory, in keeping such prisoner, as if the sheriff were in his own proper county; and all such sheriffs, jailers or other persons so called upon, shall be liable, on refusal, to the same penalties as if the sheriff making the demand were in his own county.

Power of sher-
iffs.

SEC. 168. When any person convicted of an offense shall be sentenced to imprisonment in the county jail, the court shall order the defendant into the custody of the sheriff, who shall deliver him, together with the record of conviction, to the jailer, in whose custody he shall remain in the jail of the proper county, until the term of his confinement shall have expired, or he shall have been pardoned, or otherwise legally discharged.

Confinement in
county jail.

SEC. 169. Whenever a fine shall be the whole or part of a sentence, the court may, in its discretion, order that the person sentenced shall remain confined in the county jail until the amount of such fine and costs are paid.

Fine.

Capital punishment.

SEC. 170. When any person shall be sentenced to be hung, such punishment shall be inflicted in the immediate vicinity of the jail, within an inclosure to be prepared for that purpose under the direction of the sheriff, which inclosure shall be higher than the gallows, and so constructed as to exclude the view of persons outside thereof.

Execution within jail.

SEC. 171. In all cases in which the jail in any county shall be of such construction that the sentence of death can be conveniently carried into execution within its walls, no inclosure need be prepared, as is provided in the preceding section, but such execution shall take place within the walls of the jail.

No jail in county

SEC. 172. Whenever the sentence of death shall be about to be carried into execution in any county of this territory which at the time has no jail, it shall be the duty of the sheriff to cause such execution to be conducted at such convenient place at the county seat as he may select.

Who may be present.

SEC. 173. Besides the sheriff and his assistants, the following persons may be present at the execution, and none others: The clergyman in attendance upon the prisoner, such other persons as the prisoner may designate, not exceeding six in number, and such other persons as the sheriff may designate, not exceeding twelve in number.

Military needed.

SEC. 174. Whenever the sheriff shall deem the presence of a military force necessary to carry into effect the provisions of the four preceding sections, he shall make a written requisition upon the officer of the militia highest in command then in his county, who shall issue the necessary orders to insure a compliance with the requisition of such sheriff.

Return of proceedings.

SEC. 175. Whenever the sheriff shall inflict the punishment of death upon a convict, in obedience to the command of the court, he shall make return of his proceedings as soon as may be, to the clerk of the court where the conviction was had, and the clerk shall subjoin the return to the record of conviction and sentence by recording the same.

Insanity of convict.

SEC. 176. If any convict sentenced to the punishment of death, shall appear to be insane, the sheriff shall forth-

with give notice thereof to a judge of the district court of the judicial district, and shall summon a jury of twelve impartial men to inquire into such insanity, at a time and place to be fixed by the judge, and shall give immediate notice thereof to the prosecuting attorney.

SEC. 177. The judge, clerk of the court, and prosecuting attorney, shall attend the inquiry. Witnesses may be produced and examined before the jury. The finding shall be in writing, signed by the jury. If it be found that the convict is insane, the judge shall suspend the execution of the convict until the sheriff shall receive a warrant from the governor of the territory, directing such execution. The finding of the jury, and the order of the judge, certified by the judge, shall be by the clerk entered on the journal of the court. Execution suspended.

SEC. 178. The sheriff shall transmit immediately, a certified copy of such finding to the governor, who may, as soon as he shall be convinced that the convict has become of sound mind, issue a warrant appointing a time for his execution. Sheriff to transmit to Governor.

SEC. 179. If a female convict, sentenced to the punishment of death, appear to be pregnant, the sheriff shall in like manner summon a jury of six persons, who, on like proceedings being had as in the case of an insane convict, shall return a finding signed by them. Pregnancy.

SEC. 180. If by such finding it shall appear that such female convict is with child, the sheriff shall in like manner suspend the execution of her sentence, and shall transmit the finding to the governor, who, on being satisfied that such woman is no longer pregnant, shall issue a warrant appointing a day for her execution. Execution suspended.

TITLE XIV.

Of New Trials, Motions in arrest and Error—New Trials.

SEC. 181. A new trial, after a verdict of conviction, may be granted on the application of the defendant, for any of the following reasons effecting materially his substantial rights: New trial, for what reasons granted.

First, Irregularity in the proceedings of the court, jury, or the prosecuting attorney or the witnesses for the territory, or any order of the court or abuse of discretion, by which the defendant was prevented from having a fair trial.

Second, Misconduct of the jury, or the prosecuting attorney, or of the witnesses for the territory.

Third, Accident or surprise which ordinary prudence could not have guarded against.

Fourth, That the verdict is not sustained by sufficient evidence, or is contrary to law.

Fifth. Newly discovered evidence material for the defendant, which he could not with reasonable diligence have discovered and produced at the trial.

Sixth, Error of law occurring at the trial.

Application
within ten days.

SEC. 182. The application for a new trial shall be by motion upon written grounds, filed at the term the verdict is rendered, and shall, except for the cause of newly discovered evidence material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial, be within ten days after the verdict was rendered, unless unavoidably prevented.

Affidavits.

SEC. 183. The causes enumerated in subdivision two, in the next preceding section, must be sustained by affidavits, showing their truth, and may be controverted by affidavits.

TITLE XV.

Motions in Arrest.

Motion in arrest.
when granted.

SEC. 184. A motion in arrest of judgment may be granted by the court for either of the following causes :

First, That the grand jury which found the indictment had no legal authority to inquire into the offense charged, by reason of its not being within the jurisdiction of the court.

Second, That the facts stated in the indictment do not constitute an offense.

SEC. 185. No judgment can be arrested for a defect of form.

Defect of form.
Effect of motion
in arrest

SEC. 186. The effect of allowing a motion in arrest of judgment, shall be to place the defendant in the same position

with respect to the prosecution, as before the indictment was found. If from the evidence on the trial there shall be sufficient reason to believe him to be guilty of an offense, the court shall order him to enter into a recognizance with sufficient security conditioned for his appearance at the first day of the next term of the same court, otherwise the defendant shall be discharged.

SEC. 187. Motions in arrest of judgment must be made When made. within three days after the verdict is rendered.

TITLE XVI.

Error.

SEC. 188. In criminal cases not punishable with death, Writs of error, by whom allowed after final judgment, writs of error or other writs provided by law, may, on good cause shown, be allowed on the application of the defendant, by the supreme court, or any judge thereof in vacation, as in civil cases, and in criminal cases punishable with death; writs of error or other writs provided by law, may be allowed on like application, by said court when in session, in open court, or by any two judges thereof in vacation.

SEC. 189. In all cases of conviction when the punishment shall be capital, the judges or court allowing such writ of error, or other process provided by law, shall order a suspension of the execution until such writ of error or other process provided by law, shall be heard and determined; upon hearing such writ of error, they shall order the prisoner to be discharged, a new trial to be had, or appoint a certain day for the execution of the sentence as the nature of the case may require. In capital cases.

SEC. 190. In all cases of conviction for a felony, the court, judge or judges allowing the writ of error, may order the same to be made returnable before the supreme court, and shall order a suspension of the execution of said sentence. Returnable before supreme court.

SEC. 191. In cases of conviction for misdemeanor, the court or judge allowing the writ of error, or other process provided by law, shall make it returnable as in cases of In cases of misdemeanors.

conviction of felony, and may order a suspension of the execution of the sentence upon the defendant on his entering into a recognizance before the clerk of the court in which the cause was tried, with sufficient security, to be approved by the clerk in such sum as shall be specified in the order of the court or the judge allowing such writ of error, or other writ, which recognizance shall be conditioned for the defendants prosecuting said writ of error or other writ to effect, and surrendering himself to the custody of the sheriff of the county in which such conviction was had, in case the judgment of the court shall not be reversed, or a new trial ordered.

Defendant in
penitentiary.

SEC. 192. When any defendant has been committed to the penitentiary of this territory, and the judgment by virtue of which the commitment is made shall be reversed on a writ of error allowed under the provisions of this act, by which reversal the defendant shall be entitled to his discharge or to a new trial, the clerk of the court reversing said judgment shall, under the seal of the court, forthwith certify the same to the warden of the penitentiary.

Discharge.

SEC. 193. Said warden, on receipt of such certificate, in case a discharge of such defendant be ordered, shall immediately discharge such defendant from the penitentiary.

New trial.

SEC. 194. In case a new trial be ordered, the warden of the penitentiary shall forthwith cause said defendant to be taken and conducted to the county jail and committed to the custody of the sheriff thereof, in which said defendant was convicted.

TITLE XVII.

Miscellaneous Provisions.

View of the
place.

SEC. 195. Whenever, in the opinion of the court, it is proper for the jury to have a view of the place in which any material fact occurred, it may order them to be conducted in a body, under charge of the sheriff, to the place which shall be shown to them by some disinterested person appointed by the court; while the jury are thus absent, no other person other than the sheriff having them

in charge, and the person appointed to show them the place shall speak to them on any subject connected with the trial.

SEC. 196. Whenever a counterfeit coin or instrument for the purpose of making or gilding counterfeit coin, shall be taken from the convicts or persons indicted for counterfeiting or having the same in possession with criminal intent, and shall remain in the keeping of any county officers, it shall be lawful for the commissioners of the proper county to melt the said counterfeit coin into a mass, or cast the same into other form than that of coin, and sell the same, together with the instruments aforesaid, and pay the avails into the treasury of such county for the benefit of the common schools therein; *Provided*, The said instruments be so mutilated and broken as to prevent their being applied to the purpose of counterfeiting.

Counterfeits.

Proviso.

SEC. 197. Whenever any property stolen, embezzled, or obtained under false pretenses, shall, after the trial of the person charged with the larceny, embezzlement or false obtaining thereof, remain in the possession of any officer, unclaimed by the owner, for the space of three months, the same shall, after public notice in a newspaper printed in the county, or by posting notices, under an order of the court or judge thereof, in case there shall be no paper published in said county, be sold at auction to the highest bidder, under the direction of the prosecuting attorney, and the avails thereof paid over to the treasurer of the county for the use of the common schools therein.

Property stolen,
&c., published.

SEC. 198. In case any property stolen, embezzled or obtained under false pretenses, shall remain in the custody of any officer for one year unclaimed, as aforesaid, and the thief shall not within that time be taken, or if taken, shall escape, it shall be disposed of in like manner and for like purposes as indicated in the preceding section.

Remaining un-
claimed one year

SEC. 199. When an affidavit shall be filed before any judge of a district court, police court, or any justice of the peace within this territory, setting forth that any person charged with the commission of any criminal offense against the laws of any other state or any of the territories of the

Crime against
any other state
or territory.

United States, and which, if the act had been committed in this territory, would, by the laws thereof, have been a crime, is, at the time of filing such affidavit within the county where the same may be filed, it shall be lawful, and it is hereby made the duty of such judge or justice of the peace to issue his warrant directed to the sheriff or any constable of the county, commanding him forthwith to arrest and bring before the officer issuing such writ, the person so charged.

Committed.

SEC. 200. When the person arrested, as provided in the preceding section, shall be brought before the officer issuing such warrant, it shall be lawful, and it is hereby made the duty of such officer to hear and examine such charge, and upon proof by him adjudged to be sufficient, to commit such person to the jail of the county in which such examination shall take place, or cause such person to be delivered to some suitable person to be removed to the proper place of prosecution.

Notice and re-
quisition.

SEC. 201. Whenever any person is committed to jail by any judge or justice of the peace, by either of the provisions of the preceding section, it shall be the duty of such judge or justice of the peace, forthwith to give notice, by letter or otherwise, to the sheriff of the county in which such offense shall have been committed, or to the person injured by such offense, and no person so committed shall be delayed longer in jail than necessary to allow a reasonable time to the person so notified, after they shall have received such notice, to apply for and obtain the proper requisition for the persons so committed.

Reprieve.

SEC. 202. Whenever the governor may deem it expedient and proper to reprieve any person under sentence of death, under any condition whatsoever, the condition upon which such reprieve is granted shall be specified in the warrant, and the person accepting such conditional reprieve shall subscribe such acceptance upon the warrant containing the conditions of reprieve in the presence of two witnesses, who shall attest the same, and such witnesses shall go before the clerk of the court where such sentence is recorded, and

shall prove the same, and the clerk shall thereupon record the warrant of reprieve, together with the acceptance and proof thereof, in the journals of the court, a transcript of which record shall, at all times thereafter, be evidence for or against the person accepting such conditional reprieve.

SEC. 203. If in case of any reprieve, the governor shall deem it expedient and proper to confine the person so reprieved in the penitentiary, it being so specified in the warrant, the sheriff or other officer having the person so reprieved in his custody, shall convey him to the penitentiary in the same manner as other convicts are directed by law to be conveyed, and the warden of the penitentiary shall receive such person, together with the warrant of reprieve, and shall proceed with such convict as such warrant may direct; and the expenses of transporting such person to the penitentiary shall be allowed and paid as in other cases.

Confinement
of reprieved
person in peni-
tentiary.

SEC. 204. If any person reprieved shall violate the conditions upon which such reprieve is granted, such person shall be proceeded against as in other cases of persons escaping from prison convicted of offenses.

Conditions
violated.

SEC. 205. Application for the pardon of any person convicted of an offense, and sentenced to punishment, shall be made in the manner and under the restrictions hereinafter prescribed.

Application
for pardon.

SEC. 206. Notice for the application for such pardon shall be given to the prosecuting attorney of the county in which the indictment was found against such person or persons so convicted and sentenced, at least three weeks before such application shall be considered by the governor of the territory, a copy of which notice, acknowledged by such prosecuting attorney, or certified under oath of a credible witness, to be a true copy thereof, shall accompany every such application to the governor, and a notice of such application, setting forth the names of the person or persons on whose behalf it is made, the crime of which he, she or they shall have been convicted, the time of such conviction and the term of sentence, shall also be published in some newspaper printed in such county and of general circulation

Restrictions.

therein, or if there be no newspaper published therein, then such notice shall be posted on the door of the court house of such county, at least three weeks before the governor of the territory shall consider any such application, a copy of which notice duly authenticated by some credible witness under oath, shall also accompany such application, and in no case where capital punishment is to be inflicted shall the sentence be executed within less than thirty days from the date of the sentence; such notice shall only be required to be so served and published for ten days before the consideration of such application.

Duty of prosecuting attorney.

SEC. 207. It is hereby made the duty of the prosecuting attorney of the county in which the indictment was found against such person or persons, on whose behalf such application for pardon is made, to make out and forward to the governor within ten days after the service of the notice upon him as heretofore provided, a statement setting forth the time of such trial and conviction, and the date and term of such sentence, and also the crime of which such person or persons were convicted, and he shall also briefly state any circumstances in aggravation or extenuation, if any such appear in the testimony upon the trial of the person or persons in whose behalf the application is made.

Danger of death.

SEC. 208. In every case in which there is imminent danger of death of any person imprisoned in the penitentiary, which fact shall appear by the certificate of the physician thereof, addressed to the governor, which certificate may be accompanied by the recommendation of the warden of the penitentiary for the pardon of such convict or convicts; and in every case in which the warden of the penitentiary and the directors thereof shall unite in a recommendation to the governor for the pardon of any such convict or convicts, stating specifically the considerations and reasons why such application is made, the provisions in the foregoing sections shall not be considered applicable.

Rewards.

SEC. 209. The county commissioners of the several counties in this territory are hereby authorized, when they deem the same expedient, to offer such reward as in their

judgment the nature of the case may require, for the detection or apprehension of any person charged with or convicted of felony, and pay the same on conviction of such person, together with all the necessary expenses not otherwise provided by law, [to any person who shall] succeed in making such detection or apprehension, out of the county treasury.

SEC. 210. If any person who has been convicted of murder in the first degree, and sentenced to be hung, shall escape, and shall not be retaken before the time fixed for his execution, it shall be lawful for the sheriff to re-arrest such person, and commit him to the jail of the proper county, and make return thereto to the court in which the sentence was passed, and thereupon the court shall proceed to fix the time of execution, which shall be carried into effect by the proper officer, as may be provided by law for the execution of persons convicted of murder in the first degree. ^{Escape of murderer.}

SEC. 211. Whenever any convict in the penitentiary shall be indicted for any offense committed while confined therein, said convict shall remain in the custody of the warden of said penitentiary, subject to the order of the court in which the indictment may be found. ^{Indicted while in penitentiary.}

SEC. 212. This act shall take effect from and after its passage.

Approved December 10th, 1869.

CODE OF CIVIL PROCEDURE.

CHAPTER 75.

AN ACT TO ESTABLISH A CODE OF CIVIL PROCEDURE FOR THE TERRITORY OF WYOMING.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows :

TITLE I.

Forms of Civil Actions.

Civil procedure.

SEC. 1. This act shall be known as the code of civil procedure of the territory of Wyoming.

To be liberally construed.

SEC. 2. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. Its provisions and all proceedings under it, shall be liberally construed, with a view to promote its object, and assist the parties in obtaining justice.

One form of action.

SEC. 3. The distinction between actions at law, and the forms of all such actions and suits, heretofore existing is abolished; and there shall be hereafter but one form of action, which shall be called the civil action.

Remedies.

SEC. 4. Remedies, in courts of justice, are divided into, *First*, Actions; *Second*, Special proceedings.

An action.

SEC. 5. An action is an ordinary proceeding in a court of justice, by which a party prosecutes another party, for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense.

Special proceeding.

SEC. 6. Every other remedy is a special proceeding.

Actions, two kinds.

SEC. 7. Actions are of two kinds: *First*, Civil; *Second*, Criminal.

SEC. 8. A criminal action is one prosecuted by the territory as a party against a person charged with a public offense, for the punishment thereof. Criminal action.

SEC. 9. Every other is a civil action. Civil.

SEC. 10. Where the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other. Not merged.

SEC. 11. In all actions, the party complaining shall be known as the plaintiff, and the adverse party as the defendant. Plaintiff, defendant.

SEC. 12. There can be no feigned issues; but a question of fact, not put in issue by the pleadings, may be tried by a jury upon an order for the trial, stating distinctly and plainly, the question of fact to be tried, and such order is the only authority necessary for a trial. No feigned issues.

TITLE II.

Time of Commencing Civil Actions.

SEC. 13. This title shall not apply to actions already commenced, but the statutes now in force shall be applicable to such cases, according to the subject of the action, and without regard to form. Not apply.

SEC. 14. Civil actions can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued; but where, in special cases, a different limitation is prescribed by statute, the action may be commenced accordingly. Civil actions only commenced

Actions for the Recovery of Real Property.

SEC. 15. An action for the recovery of the title or possession of lands, tenements, or hereditaments, can only be brought within twenty-one years after the cause of action shall have arisen or accrued. Only brought, time.

SEC. 16. If a person entitled to commence any action for the recovery of the title or possession of any lands, tenements or hereditaments, be at the time his or her right or title shall first descend or accrue, within the age of twenty- In ten years.

one years, a married woman, insane or imprisoned, every such person may, after the expiration of twenty-one years from the time his or her right or title first descended or accrued, bring such action within ten years after such disability is removed, and at no time thereafter.

Three years.

SEC. 17. An action for the forcible entry and detainer or forcible and unlawful detention only of real property, can only be brought within three years after the cause of such action shall have accrued.

Actions other than for the Recovery of Real Property.

Civil actions,
when brought.

SEC. 18. Civil actions, other than for the recovery of real property, can only be brought within the following periods, after the cause of action shall have accrued :

Five years.

SEC. 19. Within five years ; an action upon a specialty, or any agreement, contract or promise in writing or on a foreign judgment.

Four years.

SEC. 20. Within four years : An action upon a contract not in writing, expressed or implied ; an action upon a liability created by statute, other than a forfeiture or penalty.

Ditto.

SEC. 21. Within four years : An action for trespass upon real property ; an action for taking, detaining or injuring personal property, including actions for the specific recovery of personal property ; an action for injury to the rights of the plaintiff not arising on contract and not hereinafter enumerated ; an action for relief on the ground of fraud, but the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud.

Ditto.

SEC. 22. Within four years : Actions brought for damages growing out of the failure or want of consideration of contracts expressed or implied, or for the recovery of money paid upon contracts expressed or implied, the consideration of which has wholly or in part failed.

Ten years.

SEC. 23. Within ten years : An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff or other officer ; or upon the bond or undertaking given in attachment, injunction or any case whatever required by statute.

SEC. 24. Within one year : An action for libel, slander, assault and battery, malicious prosecution or false imprisonment; an action upon a statute for a penalty or forfeiture ; but where the statute giving such action prescribes a different limitation, the action may be brought within the period so limited. One year.

SEC. 25. An action for relief of any character not herein provided for, can only be brought within four years after the cause of action shall have accrued. For relief

SEC. 26. If a person entitled to bring any action mentioned in this title, other than for the recovery of real property, and except for a penalty or forfeiture, be at the time the cause of action accrued, within the age of twenty-one years, a married woman insane or imprisoned, every such person shall be entitled to bring such action within the respective times limited by this title after such disability shall be removed. The absence from the territory, death, or other disability of a non-resident, save the cases mentioned in this section, shall not operate to extend the period within which actions *in rem* may be commenced by and against such non-resident, or his representatives. Persons entitled to bring action.

SEC. 27. An action shall be deemed commenced within the meaning of this title, as to the defendant at the date of the summons which is served on him ; where service by publication is proper, the action shall be deemed commenced at the date of the first publication, which publication shall be regularly made. Deemed commenced.

SEC. 28. If, when a cause of action accrues against a person, he be out of the territory, or shall have absconded or concealed himself, the period limited for the commencement of the action shall not begin to run until he comes into the territory, or while he is absconded or concealed ; and if, after the cause of action accrues, he depart from the territory, or abscond or conceal himself, the time of such absence or concealment shall not be computed as any part of the period within which the action must be brought. When out of territory.

SEC. 29. When a cause of action has been fully barred by the laws of any state, territory or country where the When barred.

defendant has previously resided, such bar shall be the same defense in this territory as though it had arisen under the provisions of this title.

Founded on
contract.

SEC. 30. In an action founded on contract, when any part of the principal or interest shall have been paid, or an acknowledgment of an existing liability, debt or claim, or any promise to pay the same, shall have been made in writing, an action may be brought in such case within the period prescribed for the same, after such payment, acknowledgment or promise.

TITLE III.

Parties to Civil Action.

How prosecu-
ted.

SEC. 31. Every action must be prosecuted in the name of the real party in interest, except as otherwise provided in section thirty-four.

Who maintain.

SEC. 32. The assignee of a thing in action may maintain an action thereon in his own name and behalf, without the name of the assignor.

In case of as-
signment,

SEC. 33. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense, existing at the time of, or before notice of assignment; but this section shall not apply to a negotiable promissory note, or bill of exchange transferred in good faith, and upon good consideration, before due.

Action, who
may bring.

SEC. 34. An executor, administrator, guardian, trustee of an express trust, a person with whom or in whose name a contract is made for the benefit of another, or a person expressly authorized by statute, may bring an action, without joining with him the person for whose benefit it is prosecuted; officers may sue and be sued in such name as is authorized by law, and officers' bonds may be sued upon in the same way.

When married
woman is party.

SEC. 35. When a married woman is a party, her husband shall be joined with her, except that;

First, When the action concerns her separate property, she may sue alone;

Second, When the action is between herself and her husband, she may sue or be sued alone.

SEC. 36. If a husband and wife be sued together, the wife may defend for her own right; and if the husband neglect to defend, she may defend for his right also. Husband and wife together.

SEC. 37. When an infant is a party, he shall appear by guardian, who may be appointed by the court in which the action is prosecuted or by a judge thereof. Infant.

SEC. 38. The guardian shall be appointed as follows:

First, When the plaintiff is an infant, upon the application of the plaintiff, if he be of the age of fourteen years, or if under that age, upon the application of a relative or friend of the infant. Guardian appointed.

Second, When the infant is defendant upon the application of the infant, if he be of the age of fourteen years, and apply within ten days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

SEC. 39. A father, or in case of his death, or desertion of his family, the mother may maintain an action for the injury or death of a child; and a guardian for the injury or death of his ward. Injury to child.

SEC. 40. All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this title. Who joined as plaintiffs.

SEC. 41. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein. Any person defendant.

SEC. 42. Of the parties to the action, those who are united in interest shall be joined as plaintiffs or defendants; but if the consent of any one who should have been joined as plaintiff cannot be obtained, he may be made a defendant, the reason thereof being stated in the petition; and when the question is one of a common or general interest of many persons, or when the parties are numerous, and it is imprac-

Tenants in
common.

licable to bring them all before the court, one or more may sue or defend for the benefit of all. Tenants in common, joint tenants or co-partners, or any number less than all, may jointly or severally bring or defend, or continue the prosecution or defense of any action for the enforcement of the rights of such person or persons.

Persons sev-
erally liable.

SEC. 43. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, and sureties on the same or separate instruments, may all, or any of them, be included in the same action, at the option of the plaintiff.

Action not
abate by death.

SEC. 44. An action shall not abate by death or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of death or disability of a party, the court, on motion, may allow the action to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action. After verdict shall have been rendered in any action for a wrong, such action shall not abate by the death of any party, but the case shall proceed thereafter in the same manner as in cases where the cause of action now survives by law.

Court may de-
termine contro-
versy, when.

SEC. 45. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall order them to be brought in, and thereupon the party directed by the court shall serve a copy of the summons in the action, and the order aforesaid in like manner of service of the original summons, upon each of the parties ordered to be brought in, who shall have two days, or such time as the court may order, after service, in which to appear and plead; and in case such party fail to appear and plead within the time aforesaid, the court may cause his default to be entered, and proceed as in other cases of default, or may make such

other order as the condition of the action and justice shall require.

SEC. 46. When in an action for the recovery of real or personal property, any person having an interest in the property, applies to be made a party, the court may order it to be done. Third person made party.

SEC. 47. Upon the affidavit of a defendant before answer in an action upon contract, or for the recovery of personal property, that some third party, without collusion with him, has or makes a claim to the subject of the action, and that he is ready to pay or dispose of the same as the court may direct. the court may make an order for the safe keeping, or for the payment, or deposit in court, or delivery of the subject of the action, to such person as it may direct, and an order requiring such third party to appear in a reasonable time and maintain or relinquish his claim against the defendant. If such third party, being served with a copy of the order by the sheriff or such other person as the court may direct, fail to appear, the court may declare him Claim of third party. barred of all claim in reference to the subject of the action, against the defendant therein. If such third party appear, he shall be allowed to make himself defendant in the action, in lieu of the the original defendant, who shall be discharged from all liability to either of the other parties in respect to the subject of the action, upon his compliance with the order of the court for the payment, deposit or delivery thereof. Failure of third party to appear.

SEC. 48. The provisions of the last section shall be applicable to an action brought against a sheriff, or other officer, for the recovery of personal property taken by him under execution, or for the proceeds of such property so taken and sold by him. And the defendant in such action shall be entitled to the benefit of those provisions against the party in whose favor the execution issued, upon exhibiting to the court the process under which he acted, with his affidavit that the property, for the recovery of which or its proceeds, the action is brought, was taken under such process. Action against sheriff.

SEC. 49. In an action against a sheriff, or other officer,

Property re-
plevied by
plaintiff.

for the recovery of property taken under an execution, and replevied by the plaintiff in such action, the court may, upon application of the defendant, and of the party in whose favor the execution issued, permit the latter to be substituted as the defendant, security for the cost being given.

TITLE IV.

The County in which Actions are to be Brought.

County where
subject is situ-
ated.

SEC. 50. Actions for the following causes must be brought in the county in which the subject of the action is situated, except as provided in section fifty-one;

First, For the recovery of real property, or of an estate or interest therein;

Second, For the partition of real property;

Third, For the sale of real property, under a mortgage, lien, or other incumbrance or charge.

In two or more
counties.

SEC. 51. If the real property, the subject of the action, be an entire tract, and situated in two or more counties, or if it consists of separate tracts situated in two or more counties, the action may be brought in any county in which any tract or part thereof is situated, unless it be an action to recover the possession thereof; and if the property be an entire tract, situated in two or more counties, an action to recover the possession thereof may be brought in either of such counties; but if it consist of separate tracts in different counties, the possession of such tracts must be recovered by separate actions brought in the counties where they are situated.

Performance
of contract.

SEC. 52. An action to compel the specific performance of a contract of sale of real estate may be brought in the county where the defendants, or any of them, reside.

SEC. 53. Actions for the following causes must be brought in the county where the cause, or some part thereof, arose:

First, An action for the recovery of a fine, forfeiture or penalty imposed by a statute; except, when it is imposed for an offense committed on a river, or other stream of water, or road, which is the boundary of two or more counties, the

action may be brought in any county bordering on such river, water course or road, and opposite to the place where the offense was committed ;

County where some part of cause arose.

Second, An action against a public officer for an act done by him in virtue or under color of his office, or for a neglect of his official duty ;

Third, An action on the official bond or undertaking of a public officer.

SEC. 54. An action other than one of those mentioned in the first three sections of this title, against a corporation created by the laws of this territory, may be brought in the county in which it is situated or has its principal office or place of business, or in which any of the principal officers thereof may reside.

Action against corporation.

SEC. 55. An action against a railroad company, or an owner of a line of mail stages, or other coaches, for an injury to person or property upon the road or line, or upon a liability as a carrier, may be brought in any county through or into which the said road or line passes.

Railroad company, &c.

SEC. 56. An action other than one of those mentioned in the first three sections of this title, against a turnpike road company, may be brought in any county in which any part of the road lies.

Any county where part of road lies.

SEC. 57. An action other than one of those mentioned in the first three sections of this title, against a non-resident of this territory or a foreign corporation, may be brought in any county in which there may be property of, or debts owing to said defendant, or where said defendant may be found ; but if defendant be a foreign insurance company, the action may be brought in any county where the cause, or some part thereof, arose.

Non-resident.

Foreign insurance company.

SEC. 58. Every other action must be brought in the county in which the defendant, or some one of the defendants resides, or may be summoned.

Where defendant resides.

SEC. 59. And if any party to the action shall make affidavit, that he believes that from the bias, prejudice or partiality of the judge, he cannot get a fair and impartial trial, the court shall change the place of trial to some other

Bias of judge.

district; or for the convenience of parties, the judge may request the judge of some other district, to try the action in the county where the suit is pending.

TITLE V.

Commencement of a Civil Action.

Civil action,
how commenced.

SEC. 60. A civil action must be commenced by filing in the office of the clerk of the proper court a petition, and causing summons to be issued thereon; *Provided*, That after the filing of the petition any defendant in the action may appear and answer or demur, whether the summons has been issued or not, and such appearance, answer or demurrer, shall be deemed a waiver of summons.

Provide.

Copy of petition.

SEC. 61. A copy of the petition need not accompany the summons, but the defendant or plaintiff shall be entitled to a copy of the petition, or any other paper filed in the action, upon application to the clerk therefor; and the costs of such copy shall be taxed among the costs in the action.

Precipe.

SEC. 62. The plaintiff shall also file, with the clerk of the court, a precipe, stating the names of the parties to the action, and demanding that a summons issues thereon.

Summons, where
to contain.

SEC. 63. The summons shall be issued by the clerk, shall be under seal of the court from which the same shall issue, and shall be signed by the clerk. Its style shall be, "the territory of Wyoming, ——— county," and it shall be dated the day it is issued. It shall be directed to the sheriff of the county in which the defendant resides, or may be found, and command him to notify the defendant or defendants named therein that he or they have been sued, and must answer the petition filed by the plaintiff (giving his name) at the time stated therein, or the petition will be taken as true, and judgment rendered accordingly, and when the action is for the recovery of money only, there shall be indorsed on the writ the amount to be specified in the precipe, for which, with interest, judgment will be taken if the defendant fail to answer. If defendant fail to

appear, judgment shall not be rendered for a larger amount, and the costs.

SEC. 64. When the action is rightly brought in any county, according to the provisions of title five, a summons shall be issued to any other county, against any one or more of the defendants at plaintiff's request. Summons to any other county

SEC. 65. The summons shall be served and returned by the officer to whom it is delivered, except when issued to any other county than the one in which the action is commenced, within ten days from its date, and when issued to another county, shall be made returnable in not less than twenty nor more than sixty days from the date thereof, at the option of the party having it issued. When returned.

SEC. 66. When a writ is returned "not served," other writs may be issued, until the defendant or defendants shall be summoned; and when defendants reside in different counties, writs may be issued to such counties at the same time. "Not served."

Actual Service of Summons.

SEC. 67. The summons shall be served by the officer to whom it is directed, who shall indorse on the original writ, the time and manner of service. It may also be served by any person not a party to the action, appointed by the officer to whom it is directed. The authority of such person shall be indorsed on the writ, when the writ is served by a person appointed by the officer to whom it is directed, or when the service is made out of this territory, the return shall be verified by oath or affirmation. By whom served.

SEC. 68. The service shall be by delivering a copy of the summons to the defendant personally, or by leaving one at his usual place of residence, with some member of his family, or other person in his employ over the age of twelve years, to whom the contents thereof shall be expounded, at any time before the return day. How served.

SEC. 69. In all cases the return must state the time and manner of service. Return, what to state.

SEC. 70. The officer to whom the summons is directed, When returned.

must return the same at or before the time therein stated.

Equivalent to
service.

SEC. 71. An acknowledgment on the back of the summons, or the voluntary appearance of a defendant, is equivalent to service.

Summons
against corpora-
tion.

SEC. 72. A summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk or agent; or if none of the aforesaid officers can be found, by a copy left at the office or last usual place of business of such corporation.

Insurance com-
pany.

SEC. 73. When the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency.

Foreign corpo-
ration.

SEC. 74. When the defendant is a foreign corporation having an agent in this territory, the service may be made upon such agent.

Minor.

SEC. 75. When the defendant is a minor under the age of fourteen years, the service must be upon him, and upon his guardian or father; or, if neither of these can be found, then upon his mother, or the person having the care or control of the infant, or with whom he lives. If neither of these can be found, or if the minor be more than fourteen years of age, service on him alone shall be sufficient. The manner of service may be the same as in the case of adults.

Constructive Service.

Publication,
when.

SEC. 76. Service may be made by publication in either of the following cases:

First, In actions brought under the fiftieth, fifty-first and fifty-second sections of this code, when any or all of the defendants reside out of the territory.

Second, In actions brought to establish or set aside a will, where any or all of the defendants reside out of the territory.

Third, In actions brought against a non-resident of this territory, or a foreign corporation having in this territory,

property or debts owing to them, sought to be taken by any of the provisional remedies, or to be appropriated in any way.

Fourth, In actions which relate to, or the subject of which is, real or personal property in this territory, where any defendant has or claims a lien or interest actual or contingent therein, or the relief demanded consists wholly or partially in excluding him from any interest therein, and such defendant is a non-resident of the territory, or a foreign corporation.

Fifth, In all actions where the defendant, being a resident of the territory, has departed therefrom, or from the county of his residence, with intent to delay or defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with the like intent.

SEC. 77. Before service can be made by publication, an affidavit must be filed, that service of a summons cannot be made within this territory, on the defendant or defendants, to be served by publication, and that the case is one of those mentioned in the preceding section. When such affidavit is filed, the party may proceed to make service by publication.

Affidavit.

SEC 78. The publication must be made six consecutive weeks, in some newspaper printed in the county where the petition is filed, if there be any printed in such county; and if there be not, in some newspaper printed in this territory of general circulation in that county. It must contain a summary statement of the object and prayer of the petition, mention the court wherein it is filed, and notify the person or persons thus to be served when they are required to answer.

*Publication,
how long and
what contains.*

SEC. 79. Service by publication shall be deemed complete when it shall have been made in the manner and for the time prescribed in the preceding section; and such service shall be proved by the affidavit of the printer or his foreman or principal clerk, or other person knowing the same.

When complete.

SEC. 80. In all cases where service may be made by publication, and in all other cases where the defendants are

*Proof of sum-
mons.*

non-residents, and the cause of action arose in the territory, suit may be brought in the county where the cause of action arose, and personal service of the summons may be made out of the territory by the sheriff or some person appointed by him for that purpose. In all cases where service of a summons is made on a person without the territory, proof of such service must be made by affidavit, stating the time and manner of service, and such service shall be made in the same manner as summonses are served on parties residing within this territory.

Judgment
opened.

SEC. 81. A party against whom a judgment or order has been rendered, without other service than by publication in a newspaper, may, at any time within three years after the date of the judgment or order, have the same opened, and be let in to defend. Before the judgment or order shall be opened, the applicant shall give notice to the adverse party of his intention to make such an application, and shall file a full answer to the petition, pay all costs, if the court require them to be paid, and make it appear to the satisfaction of the court, by affidavit, that during the pendency of the action he had no actual notice thereof in time to appear in court and make his defense, but the title to any property, the subject of the judgment or order sought to be opened, which by it, or in consequence of it, shall have passed to a purchaser in good faith, shall not be effected by any proceedings under this section, nor shall they effect the title of any property sold before judgment under an attachment. The adverse party, on the hearing of an application to open a judgment, or order, as provided by this section, shall be allowed to present counter affidavits, to show that during the pendency of the action, the applicant had notice thereof in time to appear in court and make his defense.

Heirs or de
visees.

SEC. 82. In actions where it shall be necessary to make the heirs or devisees of any deceased person defendants, and it shall appear, by the affidavit of the plaintiff annexed to his petition, that the names of such heirs or devisees, or any of them, and their residence, are unknown to the plaintiff, proceedings may be had against such unknown heirs or

devisees, without naming them, and the court shall make such order respecting service as may be deemed proper, if service by publication be ordered, the publication shall not be less than six weeks.

SEC. 83. When the action is against two or more ^{Two or more defendants.} defendants, and one or more shall have been served, but not all of them, the plaintiff may proceed as follows :

First, If the action be against defendants jointly indebted upon contract, he may proceed against the defendants served, unless the court otherwise direct, and if he recover judgment, it may be entered against all the defendants thus jointly indebted so far only as it may be enforced against the joint property of all, and the separate property of the defendants served; and if they are subject to arrest, against the persons of the defendants served. ^{Jointly liable}

Second, If the action be against defendants severally liable, he may, without prejudice to his rights against those ^{Severally liable.} not served, proceed against the defendants served in the same manner as if they were the only defendants.

SEC. 84. Nothing in this code shall be so construed as to make a judgment against one or more defendants jointly or severally liable, a bar to another action against those not served. ^{Judgment not a bar.}

SEC. 85. When the summons has been served, or publication made, the action is pending, so as to charge third persons with notice of its pendency, and while pending no interest can be acquired by third persons in the subject matter thereof, as against the plaintiff's title. ^{Action, when pending.}

SEC. 86. When any part of real property, the subject matter of an action, is situated in any other county or counties than the one in which the action is brought, a certified copy of the judgment in such action must be recorded in the register of deed's office of such other county or counties, before it shall operate therein as notice, so as to charge third persons, as provided in the preceding section. It shall operate as such notice without record, in the county where it is rendered; but this section shall not apply to actions or ^{Certified copy of judgment.}

proceedings under any statute in force prior to the passage of this act, which does not require such record.

TITLE VI.

Joinder in Actions.

Causes joined,
when.

SEC. 87. The plaintiff may unite several causes of action in the same petition, when they are included in either one of the following classes :

First, The same transaction or transactions connected with the same subject of action ;

Second, Contracts, express or implied ;

Third, Injuries, with or without force, to person and property or either ;

Fourth, Injuries to character ;

Fifth, Claims to recover real property with or without damages for the withholding thereof, and the rents and profits of the same ;

Sixth, Claims to recover the possession of personal property with or without damages for the withholding thereof ;

Seventh, Claims against a trustee by virtue of a contract, or by operation of law ; *Provided*, That an action for malicious arrest and prosecution, or either of them, may be united with an action for either injury to character or to the person.

Not different
places of trial.

SEC. 88. The causes of action so united must effect all the parties to the action and not require different places of trial.

TITLE VII.

Of Pleadings in Civil Actions.

Formal allegations.

SEC. 89. The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the court.

Forms.

SEC. 90. The forms of pleadings in civil actions, and the rules by which the sufficiency of the pleadings shall be determined, shall be those prescribed by this act.

SEC. 91. The only pleadings on the part of the plaintiff

shall be the petition, demurrer or reply to the defendant's answer; and the only pleadings on the part of the defendant shall be the answer or demurrer either to the petition or reply of the plaintiff.

What pleading allowed.

SEC. 92. The petition shall contain :

First, The title of the action specifying the name of the court, and the name of the county in which the action is brought, and the name of the parties to the action, plaintiff and defendant ;

Petition, what to contain.

Second, A statement of the facts constituting the cause of action in ordinary and concise language ;

Third, A demand of the relief which the plaintiff claims. If the recovery of money be demanded, the amount thereof shall be stated, and if interest thereon be claimed, the time from which interest is to be computed shall be also stated.

SEC. 93. When the petition contains more than one cause of action, each shall be separately stated and numbered.

More than one cause.

SEC. 94. The defendant may demur to the petition within the time required in the summons to answer, when it appears upon the face thereof; either,

Demurrer, when allowed.

First, That the court has no jurisdiction of the person of the defendant, or of the subject of the action ; or,

Second, That the plaintiff has not the legal capacity to sue; or,

Third, That there is another action pending between the same parties for the same cause ; or,

Fourth, That there is a defect or misjoinder of parties, plaintiff or defendant ; or,

Fifth, That several causes of action have been improperly united ; or,—

Sixth, That the petition does not state facts sufficient to constitute a cause of action ;

Seventh, That the petition is ambiguous, unintelligible or uncertain.

SEC. 95. The demurrer shall distinctly specify the grounds upon which any of the objections to the petition are taken. Unless it do so, it shall be regarded as objecting

Demurrer.

only that the petition does not state facts sufficient to constitute a cause of action.

Demurrer and answer.

SEC. 96. The defendant may demur to the whole petition, or to one or more of the several causes of action therein stated, and answer the residue ; or may demur and answer at the same time.

Petition amended.

SEC. 97. If the petition be amended, a copy of the amendment shall be filed, or the court may, in its discretion, require the petition, as amended, to be filed, and a copy of the amendment shall be served upon every defendant to be effected thereby ; or upon his attorney, if he has appeared by attorney. The defendant shall answer or demur in such time as may be ordered by the court, and judgment by default may be entered upon a failure to answer as in other cases.

Answers.

SEC. 98. When any of the matters enumerated in section ninety-four do not appear upon the face of the petition, the objection may be taken by answer.

Waiver by defendant.

SEC. 99. If no such objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court, and that the petition does not state facts sufficient to constitute a cause of action.

Demurrer sustained.

SEC. 100. When a demurrer is sustained on the ground of misjoinder of several causes of action, the court, on motion of the plaintiff, shall allow him with costs to file several petitions, each including such of said causes of action as might have been joined ; and an action shall be docketed for each of said petitions, and the same shall be proceeded in without further service.

Answers.

Answer, what to contain.

SEC. 101. The answer of the defendant shall contain :

First, a general or specific denial to each allegation of the petition controverted by the defendant, or a denial thereof, according to his information and belief. A general denial shall only put in issue the material and express allegations of the petition.

Second, A statement of any new matter constituting a defense, counter-claim or set-off, in ordinary and concise language, and without repetition.

SEC. 102. The defendant may set forth in his answer as many grounds of defense, counter-claim and set-off as he may have. Each must be separately stated and numbered, and they must refer in an intelligible manner to the cause of action which they are intended to answer.

Counter claims

SEC. 103. The counter-claim mentioned in the last section must be one existing in favor of a defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of the contract or transaction set forth in the petition as the foundation of the plaintiff's claim, or connected with the subject of the action.

Arising out of contract.

SEC. 104. If the defendant omit to set up the counter-claim or set-off, he cannot recover costs against the plaintiff in any subsequent action thereon; but this section shall not apply to causes of action which are stricken out of or withdrawn from the answer, as provided in section one hundred and five and one hundred and twenty nine.

Omission to set up counter claim.

SEC. 105. When it appears that a new party is necessary to a final decision upon the counter-claim, the court may either permit the new party to be made by a summons to reply to the counter-claim, or may direct the counter-claim to be stricken out of the answer, and made the subject of a separate action.

New party.

SEC. 106. A set-off can only be pleaded in an action founded on contract, and must be a cause of action arising upon contract, or ascertained by the decision of the court.

Action founded on contract.

SEC. 107. When it appears that a new party is necessary to a final decision upon the set-off, the court shall permit the new party to be made; if it also appear that, owing to the insolvency or non-residence of the plaintiff, or other cause, the defendant will be in danger of losing his claim, unless permitted to use it as a set-off.

New party.

SEC. 108. When cross-demands have existed between persons under such circumstances, that if one had brought an action against the other, a counter-claim or set-off could

Neither deprived of the benefit of set-off.

have been set up, neither can be deprived of the benefit thereof by the assignment or death of the other, but the two demands must be deemed compensated, so far as they equal each other.

Who to answer
for infant, &c.

SEC. 109. The guardian of an infant or person of an unsound mind, or attorney for a person in prison, shall deny in the answer all material allegations of the petition prejudicial to such defendant.

Reply.

Reply.

SEC. 110. There shall be no reply, except upon the allegation of a counter-claim or set-off, in the answer.

Reply to new
matter.

SEC. 111. When the answer contains new matter, constituting a counter-claim or set-off, the plaintiff may reply to such new matter, denying, generally or specifically, each allegation controverted by him, and he may allege, in ordinary and concise language and without repetition, any new matter not inconsistent with the petition, constituting a defense to such new matter in the answer; or he may demur to the same for insufficiency, stating in his demurrer, the grounds thereof, and he may demur to one or more of such defenses set up in the answer, and reply to the residue.

Defense in-
joint.

SEC. 112. If the reply of the plaintiff, to any defense set up by the answer, be insufficient, the defendant may demur thereto, stating the grounds of such demurrer.

General Rules of Pleading.

Demurrer when
filed.

SEC. 113. The answer or demurrer by the defendant shall be filed within twenty days after the day on which the summons is returnable; the reply or demurrer shall be filed within thirty days after the day on which the summons was made returnable; the demurrer to the reply shall be filed within forty days after the day on which the summons was made returnable.

Answer after
the time limited.

SEC. 114. The court, or any judge thereof, in vacation, may, in his discretion, and upon such terms as may be just, allow an answer or reply to be made, or other act to be done, after the time limited by this act, or by an order enlarge such time.

SEC. 115. Every pleading, in a court of record, must be subscribed by the party or his attorney.

Pleading subscribed.

SEC. 116. In all actions, allegations of the execution of written instruments and indorsements thereon, of the existence of a corporation or co-partnership, or of any appointment or authority, shall be taken as true, unless the denial of the same be verified by the affidavit of the party, his agent or attorney.

Allegations taken as true.

SEC. 117. The verification mentioned in the last section shall not be required to the answer of a guardian defending for an infant or person of unsound mind, or a person imprisoned.

Verification, when not required.

SEC. 118. If there be several persons united in interest and pleading together, the affidavit may be made by any one of such parties. When a municipal or other corporation is a party, the verification may be made by an officer thereof, its agent or attorney.

Corporation.

SEC. 119. The affidavit shall be sufficient if it state that the affiant believes the facts stated in the pleading to be true.

Affidavit sufficient.

SEC. 120. In all cases where the party pleading is a non-resident of the county in which the action is brought, or if he shall be absent from the county where the pleading is filed, an affidavit made before filing the pleading, stating the substance of the facts afterwards inserted in the pleading, shall be a sufficient verification; such affidavit shall be filed with the pleading intended to be verified thereby.

Non-resident.

SEC. 121. The affidavit verifying pleadings may be made before any person before whom a deposition might be taken, and must be signed by the party making the same; and the officer before whom the same was taken shall certify that it was sworn to or affirmed before him, and signed in his presence. The certificate of such officer, signed officially by him, shall be evidence that the affidavit was duly made, that the name of the officer was written by himself, and that he was such officer.

Affidavit, before whom made.

SEC. 122. The verification of the pleading does not apply to the amount claimed, except in actions founded on

Amount claimed.

contracts, express or implied, for the payment of money only.

Contents of
affidavits.

SEC. 123. When the affidavit is made by the agent or attorney, it must set forth the reason why it is not made by the party himself. It can be made by the agent or attorney only:

First, When the facts are within the knowledge of the agent or attorney.

Second, When the plaintiff is an infant, or of unsound mind, or imprisoned.

Third, When the pleading to be verified is founded upon a written instrument for the payment of money only, and [such] instrument is in the possession of the agent or attorney.

Fourth, When the party is not a resident of, or is absent from the county.

Allegations,
how construed.

SEC. 124. In the construction of any pleading, for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantial justice between the parties.

Fictions.

SEC. 125. All fictions in pleadings are abolished.

Title not
changed.

SEC. 126. The title of a cause shall not be changed in any of its stages.

Copy of action,
&c.

SEC. 127. If the action, counter claim, or set-off be founded on account, or on a note, bill or written instrument, as evidence of indebtedness, a copy thereof must be attached to and filed with the pleading, except in actions founded upon notes issued to circulate as money. If not so attached and filed, the reason thereof must be shown in the pleading.

Redundant mat-
ter stricken out.

SEC. 128. If redundant, scandalous or irrelevant matter be inserted in any pleading, it may be stricken out, on motion of the party prejudiced thereby, and when the allegations of a pleading are so indefinite and uncertain that the precise nature of the charge or defense is not apparent, the court may, on motion, require the pleading to be made definite and certain by amendment.

Set-off with-
drawn.

SEC. 129. The court, at any time before the final submission of the cause, on motion of the defendant, may

allow a counter claim or set-off, set up in the answer, to be withdrawn, and the same may become the subject of another action. On motion of either party, to be made at the time such counter claim or set-off, is withdrawn, an action on the same shall be docketed, and proceeded in as in like cases after process served; and the court shall direct the time and manner of pleading therein. If the action be not so docketed, it may afterwards be commenced in the ordinary way.

SEC. 130. In pleading a judgment or other determination of a court or officer of special jurisdiction, it shall be sufficient to state that such judgment or determination was duly given or made, and the jurisdiction of any such court or officer shall be presumed until the contrary appears.

Jurisdiction
presumed.

SEC. 131. In pleading the performance of conditions precedent in a contract, it shall be sufficient to state that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing such performance.

Conditions per-
formed.

SEC. 132. In an action, counter-claim or set-off, founded upon an account, promissory note, bill of exchange or other instrument, for the unconditional payment of money only, it shall be sufficient for the party to give a copy of the account or instrument, with all credits and indorsements thereon, and to state that there is due to him on such account or instrument, from the adverse party, a specified sum which he claims, with interest. When others than the makers of a promissory note or the acceptors of a bill of exchange, are parties in the actions, it shall be necessary to state also the kind of liability of the several parties, and the facts, as they may be, which fix their liability.

Copy of ac-
count.

SEC. 133. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its passage, and the court thereupon shall take judicial notice thereof.

Private statute

SEC. 134. In action for a libel or slander, it shall be sufficient to state, generally, that the defamatory matter was published or spoken of the plaintiff, and if the allegation be

Libel.

denied, the plaintiff must prove on the trial, the facts showing that the defamatory matter was published or spoken of him.

Mitigating
circumstances.

SEC. 135. In the actions mentioned in the last section, the defendants may allege the truth of the matter charged as defamatory, and may prove the same, and any mitigating circumstances to reduce the amount of damages, or he may prove either.

Real property.

SEC. 136. In an action for the recovery of real property, it shall be described with sufficient certainty to enable an officer holding an execution to identify it.

Material allegations taken as true.

SEC. 137. Every material allegation of the petition not controverted by the answer, and every material allegation of new matter in the answer constituting a counter claim or set-off not controverted by the reply, shall, for the purpose of the action, be taken as true; but the allegation of new matter in the answer, not relating to a counter claim or set-off, or of new matter in reply, shall be deemed to be controverted by the adverse party, as upon a direct denial or avoidance, as the case may require. Allegations of value, or of amount of damage, shall not be considered as true, by failure to controvert them.

What is a material allegation.

SEC. 138. A material allegation in a pleading is one essential to the claim or defense, which could not be stricken from the pleading without leaving it insufficient.

Not stated in pleading.

SEC. 139. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in the pleading.

Tender of money

SEC. 140. When a tender of money is alleged in any pleading, it shall not be necessary to deposit the money in court when the pleading is filed, but it shall be sufficient if the money is deposited in court at the trial, or when ordered by the court.

Copy of pleading.

SEC. 141. If an original pleading be lost or withheld by any person, the court may allow a copy thereof to be substituted.

Mistakes in Pleadings and Amendments.

No variance material.

SEC. 142. No variance between the allegations, in a pleading, and the proof, is to be deemed material, unless it have actually misled the adverse party, to his prejudice, in

maintaining his action or defense upon the merits. Whenever it is alleged that a party has been so misled, that fact must be so proved to the satisfaction of the court, and it must also be shown in what respect he has been misled, and thereupon the court may order the pleading to be amended, upon such terms as may be just.

SEC. 143. When the variance is not material, as provided in the preceding section, the court may direct the fact to be found, according to the evidence, and may order an immediate amendment without cost.

Amendment.

SEC. 144. When, however, the allegation of the claim or defense, to which the proof is directed, is improved, not in some particular or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance within the last two sections, but a failure of proof.

Failure of proof

SEC. 145. The plaintiff may amend his petition without leave, at any time before the answer is filed, without prejudice to the proceedings; but notice of such amendment shall be served upon the defendant or his attorney, and the defendant shall have the same time to answer or demur thereto as to the original petition.

Amend without leave.

SEC. 146. At any time within ten days after the demurrer is filed, the adverse party may amend, of course, on payment of costs since filing the defective pleading. Notice of the filing of an amended pleading shall be forthwith served upon the other party or his attorney, who shall have the same time thereafter to answer or reply thereto, as to an original pleading.

Notice of amendment.

SEC. 147. Upon a demurrer being over-ruled, the party who demurred may answer or reply, if the court be satisfied that he has a meritorious claim or defense, and did not demur for delay.

Demurrer over-ruled.

SEC. 148. The court may, before or after judgment, in furtherance of justice, and on such terms as may be proper, amend any pleading, process or proceeding by adding or striking out the name of any party, or correcting a mistake in the name of a party, or a mistake in any other respect. or by inserting other allegations material to the case, or

Court may amend.

conform the pleading or proceeding to the facts proved, when such amendment does not change substantially the claim or defense; and when any proceeding fails to conform, in any respect, to the provisions of this code, the court may permit the same to be made conformable thereto by amendment.

Disregard of
defects.

SEC. 149. The court, in every stage of action, must disregard any error or defect in the pleadings or proceedings which does not effect the substantial rights of the adverse party; and no judgment shall be reversed or effected by reason of such error or defect.

Demurrer sus-
tained.

SEC. 150. If the demurrer be sustained, the adverse party may amend, if the defect can be remedied by way of amendment, with or without costs, as the court, in its discretion, shall direct.

Continuance.

SEC. 151. When either party shall amend any pleading or proceeding, and the court shall be satisfied, by affidavit or otherwise, that the adverse party could not be ready for trial in consequence thereof, a continuance may be granted to some day in term, or to another term of the court.

"Name un-
known."

SEC. 152. When the plaintiff shall be ignorant of the name of a defendant, such defendant may be designated, in any pleading or proceeding, by any name or description; and when his true name is discovered, the pleading may be amended accordingly. The plaintiff in such case must state in the verification of his petition that he could not ascertain the true name; and the summons must contain the words "real name unknown," and a copy thereof must be served personally upon the defendant.

Supplemental
petition.

SEC. 153. Either party may be allowed on notice, and on such terms, as to costs, the court may prescribe, to file a supplemental petition, answer or reply, alleging facts material to the case, occurring after the former petition, answer or reply.

Consolidation.

SEC. 154. Whenever two or more actions are pending in the same court, which might have been joined, the defendant may, on motion and notice to the adverse party, require him to show cause why the same shall not be consolidated,

and if no cause be shown, the said several actions shall be consolidated.

SEC. 155. The order for consolidation may be made by the court, or by a judge thereof, in vacation. Order for consolidation.

TITLE VIII.

Provisional Remedies—Arrest and Bail.

SEC. 156. A defendant in a civil action can be arrested, before and after judgment, in the manner prescribed by this code, and not otherwise; but this provision does not apply to proceedings for contempt; nor does it apply to actions or judgments prosecuted in the name of the territory of Wyoming, to recover fines or penalties for crimes, misdemeanors or offenses. Defendant, when arrested.

SEC. 157. An order for the arrest of the defendant shall be made by the judge of the court in which the action is brought, or by the probate judge of the county where the action is brought, when there is filed in the clerk's office an affidavit of the plaintiff, his authorized agent or attorney, stating the nature of the plaintiff's claim; that it is just, and the amount thereof, as nearly as may be, and establishing one or more of the following particulars: Order for arrest, by whom and when made.

First, That the defendant has removed or begun to remove any of his property out of the jurisdiction of the court, with intent to defraud his creditors.

Second, That he has begun to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors.

Third, That he has property, or rights of action, which he fraudulently conceals.

Fourth, That he has assigned, removed or disposed of, or has begun to dispose of his property, or a part thereof, with intent to defraud his creditors.

Fifth, That he fraudulently contracted the debt or incurred the obligation for which suit is about to be or has been brought.

Sixth, In an action to recover the possession of personal property unjustly detained; that the property or any part

thereof, has been concealed, removed or disposed of, so that it cannot be found or taken by the sheriff.

Proviso. *Seventh*, The affidavit shall also contain a statement of the facts claimed to justify the belief in the existence of one or more of the above particulars. *Provided however*, That no defendant in an action shall be arrested in an action for the recovery of money only, unless the action be founded on a contract express or implied.

Undertaking. SEC. 158. The order of arrest shall not be issued by the judge until there has been executed, by one or more sufficient sureties of the plaintiff, a written undertaking to the effect that the plaintiff shall pay to the defendant all damages which he may sustain by reason of the arrest, if the order be wrongfully obtained, not exceeding double the amount of plaintiff's claim stated in the affidavit.

Order, when made. SEC. 159. The order may be made to accompany the summons, or at any time afterwards, before judgment.

Amount of bail. SEC. 160. The order of arrest shall be addressed and delivered with a copy of the affidavit to the sheriff. The order shall state the names of the parties, the court in which the action is brought, and the amount of the plaintiff's claim specified in the affidavit, and shall require the sheriff to arrest the defendant, and hold him to bail in double the sum stated in the affidavit, which amount of bail in no case shall be less than two hundred and fifty dollars, and to make return of the order on a day to be named therein, with the undertaking of the bail, if any be given.

Return day. SEC. 161. The return day of the order of arrest, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be fifteen days after it is issued.

Order, how executed. SEC. 162. The sheriff shall execute the order by arresting the defendant, and delivering to him a copy thereof and of the affidavit. If the defendant cannot be found before the return day, the plaintiff shall be entitled to further orders, without another affidavit or undertaking until the defendant is arrested; but orders of arrest shall not be issued to any other than the county in which the action is brought.

SEC. 163. The defendant when arrested shall be committed by the sheriff to the jail of the county, and kept in custody until discharged by law. Committed.

SEC. 164. The defendant may, before or after giving bail, deposit in the hands of the sheriff, or in court, the amount of money mentioned in the order of arrest, whereupon he shall be discharged, or his bail, if any be given, shall be released. Money deposited with sheriff.

SEC. 165. The sheriff shall pay into court the money received by him in lieu of bail. If received in vacation, he shall pay it on the first day of the next term; if received during a term, he shall pay it immediately. Money paid into court.

SEC. 166. The court shall make proper orders for the safe keeping of money deposited in lieu of bail. It may direct the sheriff to keep the money, and after final judgment in the action shall order it to be paid to the party entitled thereto, according to the result. Court to make orders.

SEC. 167. Money so deposited with the sheriff, in lieu of bail, or directed by the court to be kept by him, shall be held upon his official responsibility; and he and his sureties shall be liable and may be proceeded against for any default in relation thereto, as in other cases of delinquency. Responsibility of sheriff.

SEC. 168. Bail may be given by the defendant on his arrest or at any time afterwards, before judgment. It shall be done by causing one or more sufficient sureties to execute a written undertaking to the plaintiff, in the presence of the sheriff, to the effect that, if judgment shall be rendered in the action against the defendant, he will render himself amenable to the process of the court thereon. The undertaking when accepted shall be returned to the clerk's office and the defendant discharged. Bail.

SEC. 169. The plaintiff or his attorney, may object to the bail for insufficiency, at any time within five days after notice of the undertaking having been given. Within such time, he shall serve upon the sheriff a written notice that he does not accept the bail, or he shall be deemed to have accepted it, and the sheriff shall be exonerated from liability. Insufficiency.

When the undertaking is given after return of arrest, the plaintiff shall have notice thereof.

Justification.

SEC. 170. On the receipt of such notice, the sheriff or defendant may, within ten days thereafter, give to the plaintiff or his attorney, notice in writing of the justification of the same or other bail, before a judge or clerk of the court in which the action is brought, a probate judge, or justice of the peace, at a specified time and place; the time to be not less than five, nor more than ten days thereafter. In case other bail be given there must be a new undertaking.

Examined on oath.

SEC. 171. For the purpose of justification, each of the bail must attend before the proper officer, at the time and place mentioned, and may be examined on oath or affirmation touching his sufficiency, in such manner as the officer may think proper.

Bail insufficient

SEC. 172. If the officer find the bail sufficient he shall indorse his allowance on the undertaking and cause the same to be filed with the clerk, and the sheriff shall thereupon be discharged from liability.

Sheriff liable.

SEC. 173. After being arrested, if the defendant escapes or be rescued, or bail be not taken, or be adjudged insufficient, or deposit be not made, the sheriff shall be liable as bail. But he may discharge himself from liability by putting in sufficient bail at any time before judgment.

"Not found."

SEC. 174. The return of "not found" upon an execution against the body of the defendant shall be necessary to fix the liability of the sheriff as bail, which liability shall be the amount of the judgment, interest and costs. This liability shall be enforced only in a separate action against him, or against him and his sureties on his official bond, as in other cases of delinquency.

Bail liable to sheriff.

SEC. 175. The bail adjudged insufficient, shall be liable to the sheriff for the damages he may sustain by reason of such insufficiency.

Liability, how fixed.

SEC. 176. The liability of the bail shall be fixed in the manner provided in section one hundred and seventy-four, for fixing the liability of the sheriff as bail, and the bail can be proceeded against in an action only.

SEC. 177. A surrender of the defendant to the sheriff of the county in which he was arrested, with a delivery of a certified copy of the undertaking of the bail, whether such surrender be made by the defendant himself, or by his bail, shall discharge the bail. Such surrender may be made at any time before the return day of the summons in an action against the bail. The sheriff shall give to the bail a written acknowledgment of the surrender, and hold the defendant in his custody upon said copy of the undertaking of bail as upon an order of the arrest. On the production of the sheriff's acknowledgment of the surrender to the clerk of the court, an exoneration of the bail shall be entered on his undertaking.

Discharge of
bail.

SEC. 178. For the purpose of surrendering the defendant, the bail, at any time or place, before he is finally charged, may himself arrest him, or by a written authority indorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

Who may ar-
rest defendant.

SEC. 179. The bail will be exonerated by the death of the defendant, or his imprisonment in a state prison, or by his legal discharge from the obligation to render himself amenable to the process of the court, or by his surrender to the sheriff of the county in which he was arrested in execution thereof within the time fixed in section one hundred and seventy-seven, or within such further time as the court, in which the action is pending may allow.

Bail exoner-
ated.

SEC. 180. If money be deposited by the defendant on his discharge, bail may be given and justified upon notice as prescribed in section one hundred and seventy, at any time before judgment; and thereupon the court in, or judge thereof in which the action is brought, on being satisfied that the bail has been given and adjudged sufficient, shall direct the money deposited, refunded to the defendant, and it must be refunded accordingly.

Money deposited.

SEC. 181. If at any time before or after judgment against the bail, proceedings in error are commenced, on the judgment against the principal, in the suit in which their undertaking was taken, the court or judge thereof may, on

Proceedings in
error.

motion, stay proceedings against such bail, for a reasonable time, on their paying all costs that have accrued against them; and if, on such proceedings, the judgment against the principal shall be reversed, and the principal discharged from said suit, the bail shall be discharged from the undertaking.

Order of arrest
vacated.

SEC. 182. A defendant arrested may, at any time before the justification of the bail, apply on motion, to the court in which the suit is brought, if in session, and in vacation, to a judge thereof, to vacate the order of arrest, or to reduce the amount of the bail. Reasonable notice of such motion must be given to the plaintiff.

Motion upon
affidavits.

SEC. 183. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same, by affidavits or other evidence, in addition to that on which the order of arrest was made.

Liable for fees.

SEC. 184. Any person causing another to be committed to jail under the provisions of this chapter, shall be liable, in the first instance, for the jail fees, and shall, if required by the jailer, pay such fees weekly in advance; and such fees so paid shall be a part of the costs of the case.

TITLE IX.

Replevin of Property.

Delivery of
property.

SEC. 185. The plaintiff in an action to recover the possession of specific personal property, may, at the commencement of the suit, or at any time before answer, claim the immediate delivery of such property, as provided in this title.

Order for delivery,
what to show

SEC. 186. An order for the delivery of property to the plaintiff shall be made by the clerk of the court in which the action is brought, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing,—

First, A description of the property claimed.

Second, That the plaintiff is the owner of the property or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property.

Third, That the property is wrongfully detained by the defendant.

Fourth, The value of the property.

Fifth, That it was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine or amercement assessed against him, or by virtue of an order of delivery issued under this title or any other mesne or final process issued against the plaintiff; or if taken on an execution or order of attachment, that it is by statute exempt from such levy or attachment.

SEC. 187. The order for the delivery of the property to the plaintiff shall be addressed and delivered to the sheriff. Addressed to sheriff. It shall state the names of the parties, the court in which the action is brought, and command the sheriff to take the property, describing it, and deliver it to the plaintiff, and to make return of the order on a day to be named therein.

SEC. 188. The return day for the order of delivery, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be twenty days after it issued. Return day.

SEC. 189. The sheriff shall execute the order by taking the property therein mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detention of the property, or his agent from whose possession the property is taken, or if neither can be found by leaving a copy of the order at the usual place of the abode of either, with some person of suitable age and discretion. Duty of sheriff

SEC. 190. The sheriff or other officer shall not deliver to the plaintiff, his agent or attorney, the property so taken, until there has been executed by one or more sufficient sureties of the plaintiff, a written undertaking to the defendant, in at least double the value of the property taken, to the effect that the plaintiff shall duly prosecute the action and pay all costs and damages which may be awarded against him. The undertaking shall be returned with the order. Undertaking.

SEC. 191. For the purpose of fixing the amount of the undertaking, the value of the property taken shall be ascer- Property as-
sessed.

tained by the oath of two or more responsible persons, whom the sheriff or other officer shall swear truly to assess the value thereof.

Property re-
turned.

SEC. 192. If the undertaking required by section one hundred and ninety be not given within forty-eight hours from the taking of the property under said order, the sheriff or other officer shall return the property to the defendant; and if the sheriff or other officer deliver any property so taken to the plaintiff, his agent or attorney, or keep the same from the defendant, without taking such security, within the time aforesaid, or if he take insufficient security, he shall be liable to the defendant in damages.

Exception to
sureties.

SEC. 193. The defendant may, within forty-eight hours from the time the undertaking referred to in the preceding section is given by the plaintiff, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fail to do so, he must be deemed to have waived all objections to them. When the defendant excepts, the sureties must justify upon notice, as bail on arrest. The sheriff or other officer shall be responsible for the sufficiency of the sureties, until the objection to them is waived as above provided, or until they justify. The property shall be delivered to the plaintiff, when the undertaking required by section one hundred and ninety has been given.

Judgment for
defendant.

SEC. 194. If the property has been delivered to the plaintiff, and judgment be rendered against him on demurrer, or if he otherwise fail to prosecute his action to final judgment, the court shall, on application of the defendant or his attorney, impanel a jury to inquire into the right of property and right of possession of the defendant to the property taken. If the jury shall be satisfied that said property was the property of the defendant at the commencement of the action, or if they shall find that the defendant was entitled to the possession only of the same at such time, then, and in either case, they shall assess such damages for the defendant as right and proper; for which, with costs of suit the court shall render judgment for the defendant.

SEC. 195. In all cases where the property has been delivered to the plaintiff, when the jury shall find upon issue joined, for the defendant, they shall also find whether the defendant has the right of property or the right of possession only, at the commencement of the suit, and if they find either in his favor, they shall assess such damages as they think right and proper for the defendant; for which, with costs of suit, the court shall render judgment for the defendant.

Damages.

SEC. 196. In all cases when the property has been delivered to the plaintiff, where the jury shall find for the plaintiff, on an issue joined, or on inquiry of damages upon a judgment by the default, they shall assess adequate damages to the plaintiff for the illegal detention of the property; for which, with costs of suit, the court shall render judgment for defendant.

Damages to plaintiff.

SEC. 197. When the property claimed has not been taken, or has been returned to the defendant by the sheriff for want of the undertaking required by section one hundred and ninety, the action may proceed as one for damages only, and the plaintiff shall be entitled to such damages as are right and proper; but if the property be returned for want of the undertaking required by section one hundred and ninety, the plaintiff shall pay all costs made by taking the same.

Plaintiff pay costs.

SEC. 198. An order may be directed to any other county than the one in which the action is brought, for the delivery of the property claimed. Several orders may be issued at the same time, or successively, at the option of the plaintiff; but only one of them shall be taxed in the costs, unless otherwise ordered by the court.

Several orders

SEC. 199. The sheriff or other officer in the execution of the order of delivery, may break open any building or enclosure in which the property claimed, or any part thereof is concealed; but not unless he has been refused an entrance into said building or enclosure and the delivery of the property, after having demanded the same.

Sheriff may break open buildings.

SEC. 200. No suit shall be instituted on the undertaking given under section one hundred and ninety, before an

No suit.

execution issued on a judgment in favor of the defendant in the action shall have been returned, that sufficient property whereon to levy and make the amount of such judgment cannot be found in the county.

Order set aside

SEC. 201. Any order for the delivery of property issued under section one hundred and eighty-six, without the affidavit required thereby, shall be set aside at the cost of the clerk issuing the same, and such clerk, as well as the plaintiff, shall also be liable in damages to the party injured.

TITLE X.

Attachment—Article 1.

SEC. 202. The plaintiff in a civil action for the recovery of money may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon the grounds herein stated:

First, When the defendant or one of the defendants, is a foreign corporation, or a non-resident of this territory; or,

Second, Has absconded with the intent to defraud his creditors; or,

Third, Has left the county of his residence to avoid the service of a summons; or,

Fourth, So conceals himself that a summons cannot be served upon him; or,

Fifth, Is about to remove his property, or a part thereof, out of the jurisdiction of the court, with the intent to defraud his creditors; or,

Sixth, Is about to convert his property, or a part thereof into money, for the purpose of placing it beyond the reach of his creditors; or,

Seventh, Has property, or rights in action, which he conceals; or,

Eighth, Has assigned, removed or disposed of, or is about to dispose of, this property, or a part thereof, with the intent to defraud his creditors, or,

Ninth, Fraudulently contracted the debt or incurred the obligation for which suit is about to be or has been brought.

SEC. 203. An order of attachment shall be made by the clerk of the court in which the action is brought, in any case mentioned in the preceding section, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, stating,—

Order of attachment.

First, The nature of the plaintiff's claim.

Second, That it is just.

Third, The amount which the affiant believes the plaintiff ought to recover.

Fourth, The existence of some one of the grounds for an attachment enumerated in the preceding section, or that the affiant has good reason to believe and does believe that some one of said grounds, (stating what one,) exists.

SEC. 204. Before issuing the writ, the clerk shall require a written undertaking on the part of the plaintiff in a sum not less than two hundred dollars, and in case the plaintiff's claim exceeds two hundred dollars, not exceeding double the amount claimed by the plaintiff, with sufficient sureties to the effect that if the defendant recover judgement, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Undertaking of plaintiff.

SEC. 205. The writ shall be directed to the sheriff of any county in which property of such defendant may be, and require him to attach and safely keep all the property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the petition, unless the defendant give him security by the undertaking, of at least two sufficient sureties, in an amount sufficient to satisfy such demands, besides cost, in which case to take such undertaking. Several writs shall issue at the same time to the sheriffs of different counties, if requested by the plaintiff; *Provided*, That the defendant shall not be charged with the costs of more than one writ, unless it appear to the satisfaction of the court that it was necessary to issue the several writs.

Duty of sheriff

Provided.

Shares of stock.

SEC. 206. The right or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits therein, and all debts due such defendant, and all other of his property in this territory not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

Writ, how executed.

SEC. 207. The sheriff to whom the writ is directed and delivered, shall execute the same without delay, and if the undertaking mentioned in section two hundred and five be not given, as follows: Real property shall be attached by leaving a copy of the writ with the occupant thereof; or if there be no occupant, by posting a copy in a conspicuous place thereon, and filing a copy, together with a description of the property attached, with the register of deeds of the county where such property is situate; and from and after the filing of the same, such levy shall take effect, as to creditors and *bona fide* purchasers without notice, and not before. Personal property capable of manual delivery shall be attached by taking it into custody. Stock or shares, or interest in stock or shares, of any corporation or company, shall be attached by leaving with the president or other head of the same, or the secretary, cashier, or agent thereof, a copy of the writ, and a notice stating the stock or interest of the defendant is attached in pursuance of such writ. Debts and credits and other personal property, not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession or under his control, such credits or other personal property, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control belonging to the defendant, are attached in pursuance of such writ.

Third persons served.

SEC. 208. Upon receiving information in writing from the plaintiff, his agent or attorney, that any person has in his possession or under his control, any credits, or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff shall serve upon such person a copy of the writ, and a notice that such credits, or

other property or debts as the case may be, are attached in pursuance of such writ.

SEC. 209. All persons having in their possession, or under their control, any credits or other personal property, belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in the two preceding sections, shall be, unless such property is delivered up or transferred, or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged or any judgment recovered by him be satisfied.

Liability of
third person.

SEC. 210. Any person owing debts due the defendant, or having in his possession or under his control, any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court, or judge, may, after such examination, order personal property capable of manual delivery to be delivered to the sheriff on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

Attendance
before court.

SEC. 211. The sheriff shall make a full inventory of the property attached, and return the same with the writ. To enable him to make such returns as to debts and credits attached, he shall request at the time of service the party owing the debt or having the credit, to give him a memorandum stating the amount and description of each; and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceeding, taken for the purpose of obtaining information respecting the amount and description of such debt or credit.

Inventory.

SEC. 212. If any of the property attached be perish-

Perishable
property sold.

able, the sheriff shall sell the same in the manner in which said property is sold on execution. The proceeds and other property attached by him shall be retained by him, to answer any judgment that may be recovered in the action, unless sooner subject to execution upon another judgment recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The sheriff's receipt shall be a sufficient discharge for the amount paid.

Judgment re-
covered.

SEC. 213. If judgment be recovered by the plaintiff, the sheriff shall satisfy the same out of the property attached by him, which has not been delivered to the defendant, or a claimant as hereinafter provided, or subject to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose :

First, By paying to the plaintiff the proceeds of sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment.

Second, If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution, so much of the property real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notice of the sales shall be given, and the sales conducted as in other cases of sales on execution.

Balance due.

SEC. 214. If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting the fees, to the payment of the judgment, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, upon reasonable demands, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment.

SEC. 215. If the execution be returned unsatisfied, in

whole or in part, the plaintiff may prosecute any undertaking given pursuant to section two hundred and five or section two hundred and eighteen, or he may proceed as in other cases upon the return of an execution. Execution unsatisfied.

SEC. 216. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of the sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands, shall be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom. Attachment discharged.

SEC. 217. Whenever the defendant shall have appeared in the action, he may apply, upon reasonable notice to the plaintiff, to the court in which the action is pending, or to the judge thereof, for an order to discharge the attachment wholly or in part, upon the execution and filing of the undertaking mentioned in the next section. Such order may be granted directing the release from the operation of the attachment, upon the filing of such undertaking, and the justification of the sureties thereon, if required by the plaintiff, of all or any part of the property, money, debts or credits attached, as the case may be, all the proceeds of sales and moneys collected by the sheriff, and all the property attached remaining in his hands, so released, shall be paid or delivered to the defendant upon the filing of such undertaking and making such justification, if required by the plaintiff. Released from attachment, when.

SEC. 218. On granting such order, the court or the judge shall require an undertaking in behalf of the defendant, with at least two sureties, residents and freeholders or householders in the county, which shall be filed, to the effect, in case the value of the property or the amount of money, debts or credits sought to be released shall be equal or exceed the amount claimed by the plaintiff in the complaint, that the defendant will pay to the plaintiff the amount of the judgment which may be recovered in favor of the plaintiff in the action, not exceeding the sum specified in the undertaking, which shall be at least double the amount so claimed. Undertaking and sureties.

by the plaintiff, or to the effect, in case the value of the property or the amount of money, debts or credit, sought to be released shall be less than the amount so claimed by the plaintiff, that the defendant will pay the amount of such judgment, to the extent of the value of the property, or amount of money or debts, or credits sought to be released, not exceeding the sum specified in the undertaking, which shall be at least double the value of the property, money, debts or credits. The value of the property sought to be released, if disputed, shall be determined by the court or judge thereof, upon proof, or by a sworn appraiser or sworn appraisers, not exceeding three, to be appointed by the court or the judge for that purpose. Before filing the undertaking, the defendant shall serve a copy thereof upon the plaintiff, and if the plaintiff require a justification by the sureties, he shall give notice thereof to the defendant within two days; or at the time of giving notice of motion for an order to discharge the attachment, the defendant may, in his notice, name the sureties, and if the plaintiff require them to justify, he shall give notice thereof at the hearing of the motion. If required, the sureties shall justify before the court in which the suit is pending, or the judge thereof, after reasonable notice.

Writ improperly
issued.

SEC. 219. The defendant may also, before the time of answering expires, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or to the judge thereof, for the discharge of the attachment, on the ground that the writ was improperly issued, and may traverse, by affidavit the allegations in the affidavit upon which the attachment issued.

Plaintiff may
oppose affidavits.

SEC. 220. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the writ of attachment was issued.

Writ discharged.

SEC. 221. If, upon such application, it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged.

SEC. 223. The sheriff shall return the writ of attach-

ment, with the summons, if issued, at the same time; otherwise, within twenty days after its receipt, with a certificate of his proceedings indorsed thereon or attached thereto. Writ when returned.

SEC. 224. The foregoing provisions of this title shall not apply to any action commenced before the passage of this act, but the attachment law, as existing in this territory before the passage of this act, may be applied in all such actions. This title when not to apply.

Deposit in Court.

SEC. 225. Where it is admitted, by the pleading or examination of a party, that he has in his possession, or under his control, any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same upon motion, to be deposited in court, or delivered to such party, upon such conditions as may be just, subject to the further direction of the court. Property held as trustee.

SEC. 226. A receiver may be appointed by the court in which the action is pending, or by a judge thereof; Receiver, when appointed.

First, Before judgment, provisionally, on the application of either party, where he establishes a *prima facie* right to the property, or an interest in the property, which is the subject of the action, and which is in possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially injured or impaired.

Second, After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal; and

Third, In such other cases as are in accordance with the practice of courts of equity jurisdiction.

ARTICLE II.

Attachments in certain Actions Before Due.

SEC. 227. A creditor may bring an action on a claim before it is due, and have an attachment against the property of the debtor in the following cases: Attachment, before claim is due.

First, Where a debtor has sold, conveyed, or otherwise disposed of his property, with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts.

Second, Where he is about to make such sale, conveyance or disposition of his property, with such fraudulent intent.

Third, When he is about to remove his property or a material part thereof, with the intent, (or to the effect) of cheating or defrauding his creditors, or of hindering and delaying them in the collection of their debts.

By whom granted.

SEC. 228. The attachment authorized by the last section, may be granted by the court in which the action is brought, or by a judge thereof, or by the probate judge of the county; but before such action shall be brought, or such attachment shall be granted, the plaintiff, his agent or attorney, shall make an oath, in writing, showing the nature and amount of plaintiff's claim, that it is just, when the same shall become due, and the existence of some one of the grounds for attachment enumerated in the preceding section.

Action dismissed.

SEC. 229. If the court or judge refuse to grant an order of attachment, the action shall be dismissed, but without prejudice to a future action; and in all such actions application for an attachment must be made.

Order, what to specify.

SEC. 230. The order of the court or judge granting the attachment shall specify the amount for which it is allowed, not exceeding a sum sufficient to satisfy the plaintiff's claim, and the probable cost of the action.

Undertaking.

SEC. 231. The order of attachment as granted by the court or judge, shall not be issued by the clerk until there has been executed in his office, such undertaking on the part of the plaintiff as is directed by section two hundred and four.

No judgment before claim is due.

SEC. 232. The plaintiff in such action shall not have judgment on his claim before it becomes due, and the proceedings on attachment may be conducted without delay.

SEC. 233. The proceedings in the first article of this

title, subsequent to section two hundred and four, shall, so far as they are applicable, regulate the attachments authorized by this article. Proceedings.

Garnishment in Certain Cases.

SEC. 234. In all cases where an execution issued upon any judgment of a court of record, or of a justice of the peace, shall be returned by the officer in whose hands the same was placed for service, unsatisfied for want of sufficient property whereof to levy and collect the same, and the judgment creditor in such execution, his agent or attorney, shall file an affidavit in the office of the clerk of the court, or justice of the peace, from which said execution issued, that he has good reason to and does believe that any person or corporation, (naming them), have property and are indebted to the judgment debtor, the said clerk or justice of the peace, shall issue a summons, as in other cases, requiring such person or corporation to appear in court and answer such interrogatories as shall be propounded to him, it or them, touching the goods, chattels, rights and credit of said judgment debtor in his, its or their possession or control. Garnishment,
when allowed.

SEC. 235. The summons shall be made returnable, and the said persons or corporations shall be required to appear, as in ordinary cases of summons, and thereafter, like proceedings shall be had therein, and said garnishees shall be held liable, in all respects, as in cases of garnishees before judgment. Return of sum-
mons and subse-
quent proceed-
ings.

SEC. 236. The summons shall be served as a summons in an original action is served; the said persons or corporations so summoned shall be liable to the judgment creditor in said execution, for all property, moneys and credits in his, its or their hands, or due from him, it or them, to the judgment debtor in said execution, at the time of, and which may come into his, its or their hands or control after the service of said summons. Summons, how
served.

SEC. 237. No proceedings against such garnishee or garnishees shall be quashed, or such garnishee or garnishees discharged, by reason of any informality or irregularity

Not quashed.

merely, of the affidavit or summons provided for in this title.

In certain cases

SEC. 238. In cases where the garnishee, in answering such interrogatories, shall disclose that he as property in his possession or under his control, belonging to the defendant or defendants in execution, the court shall order the same to be taken and sold by the officers upon execution as in other cases.

When indebted
to defendant.

SEC. 239. In cases where the garnishee, in answering such interrogatories, shall disclose that he is indebted to the defendant in execution, the court shall order the garnishee to pay over the amount found to be due from the said garnishee to the defendant in execution, which amount shall be collected by execution, as in other cases, as near as may be, and such amount, when paid or collected, shall be credited on the original judgment, and the garnishee shall be credited for the amount so paid or collected.

Ten days notice

SEC. 240. Whenever the defendant in an attachment suit has given an undertaking for the release of property attached, as provided in this title, the plaintiff may, by giving the surety or sureties on such undertaking at least ten days notice, apply to the court for judgment against such surety or sureties, and unless such surety or sureties show good and lawful cause why judgment should not be rendered against him or them, the court shall cause to be entered such judgment as shall have been rendered against the original defendant in the action, with such further costs as shall have accrued.

When judgment rendered.

SEC. 241. Whenever judgment shall have been rendered against any surety or sureties, as provided in the above section, execution shall issue commanding the officer to make the amount out of the property of the original defendant, and in failure so to do for want of sufficient property, then to make said amount out of the property of the surety or sureties, naming him or them.

Ditto.

SEC. 242. When judgment is rendered against the surety or sureties as above provided, the plaintiff shall pay all costs of obtaining the judgment against such surety or sureties, if the amount of the first judgment be made out

of the property of the original defendant, if not so made, then such costs to be collected as the remainder of the judgment.

SEC. 243. Whenever such judgment, or any portion thereof, shall be collected out of the property of such surety or sureties, the judgment against the original defendant, or so much thereof as shall be necessary, shall stand to the use and benefit of such surety or sureties until his or their claim shall have been satisfied. When collected.

TITLE XI.

Injunction.

SEC. 244. The injunction provided by this code is a command to refrain from a particular act. It may be the final judgment in an action, or may be allowed as a provisional remedy, and when so allowed, it shall be by order. The writ of injunction is abolished. Injunction.

SEC. 245. When it appears, by the petition, that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce great or irreparable injury to the plaintiff; or when, during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act. It may also be granted in any case where it is specially authorized by statute. When plaintiff is entitled to relief.

SEC. 246. The injunction may be granted at the time of commencing the action or at any time afterwards, before judgment by the district court or the judge thereof, or, in his absence from the county, by the probate judge, upon its appearing satisfactorily to the court or judge, by the affidavit of the plaintiff or his agent, that the plaintiff is entitled thereto. May be granted.

Reasonable notice to be given.

SEC. 247. If the court or judge deem it proper that the defendat or any party to the suit, should be heard before granting the injunction, it may direct a reasonable notice to be given to such party to attend for such purpose, at a specified time and place, and may, in the mean time, restrain such party.

Party may be restrained.

SEC. 248. An injunction shall not be granted against a party who has answered, unless upon notice, but such party may be restrained until the decision of the application for an injunction.

Not operate until, &c.

SEC. 249. No injunction, unless otherwise provided by special statute, shall operate until the party obtaining the same shall give an undertaking, executed by one or more sufficient sureties, to be approved by the clerk of the court or judge granting such injunction, in an amount to be fixed by the court or judge allowing the same, to secure to the party injured the damages he may sustain, if it be finally decided that the injunction ought not to have been granted.

Indorsement, &c.

SEC. 250. The order of injunction shall be addressed to the party enjoined, shall state the injunction and shall be issued by the clerk. When the injunction is allowed at the commencement of the action, the clerk shall indorse upon the summons, "injunction allowed," and it shall not be necessary to issue the order of injunction, nor shall it be necessary to issue the same, where notice of the application therefor has been given to the party enjoined. The service of the summons so indorsed, or the notice of an application for an injunction, shall be notice of its allowance.

When allowed during litigation.

SEC. 251. That when the injunction is allowed during the litigation, and without notice of the application therefor, the order of injunction shall be issued, and the sheriff shall forthwith serve the same upon each party enjoined, in the manner prescribed for serving a summons, and make return thereof without delay.

Binds the party

SEC. 252. An injunction binds the party from the time he has notice thereof, and the undertaking required by the applicant therefor is executed.

SEC. 253. No injunction shall be granted by a judge

after a motion therefor has been overruled on the merits of the application by his court, and where it has been refused by the court in which the action is brought, or a judge thereof, it shall not be granted to the same applicant, by a court of inferior jurisdiction or any judge thereof.

When no injunction granted

SEC. 254. An injunction granted by a judge may be enforced as the act of the court. Disobedience of any injunction may be punished as a contempt by the court or any judge who might have granted it in vacation. An attachment may be issued by the court or judge, upon being satisfied, by affidavit, of the breach of the injunction, against the party guilty of the same, and he may be required, in the discretion of the court or judge, to pay a fine not exceeding two hundred dollars, for the use of the county, to make immediate restitution to the party injured, and give further security to obey the injunction; or in default thereof, he may be committed to close custody, until he shall fully comply with such requirements, or be otherwise legally discharged.

Penalishment.

SEC. 256. That a party enjoined may, at any time before judgment, upon reasonable notice to the party who has obtained the injunction, move the court or judge for additional security; and if it appear that the surety in the undertaking has removed from the territory or is insufficient, the court or judge may vacate the injunction, unless, in a reasonable time, sufficient security be given.

Additional security.

SEC. 257. On the hearing of an application for an injunction, each party may read affidavits. All affidavits shall be filed.

Affidavits.

SEC. 258. If the injunction be granted without notice, the defendant, at any time before the trial, may apply, upon notice to the court in which the action is brought, or any judge thereof, to vacate or modify the same. The application may be made upon the petition and affidavits upon which the injunction is granted, or upon affidavits on the part of the party enjoined with or without answer. The order of the judge, allowing, dissolving, or modifying an injunction, shall be returned to the office of the clerk of the court in which

Where granted without notice.

the action is brought, and recorded and obeyed, as if made by the court.

Plaintiff may
oppose.

SEC. 259. If application be made upon affidavits, on the part of the defendant, but not otherwise, the plaintiff may oppose the same, by affidavits, or other evidence, in addition to that on which the injunction was granted.

Defendant may
obtain injunction

SEC. 260. A defendant may obtain an injunction upon an answer in the nature of a counter claim. He shall proceed in the manner prescribed in this title.

Receivers and other Provisional Remedies.

Receiver, how
appointed.

SEC. 261. A receiver may be appointed by the supreme court, the district court, or any judge of either, or in the absence of said judges from the county, by the probate judge:

First, In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party, whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.

Second, In an action by a mortgagee for the foreclosure of his mortgage, and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has been performed, and the property is probably insufficient to discharge the mortgage debt.

Third, After judgment, to carry the judgment into effect.

Fourth, After judgment, to dispose of the property according to judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied, and the judgment debtor refuses to apply the property in satisfaction of the judgment.

Fifth, In the cases provided in this code, and by special statutes, when a corporation has been dissolved, or is

insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

Sixth, In all other cases, where receivers have heretofore been appointed by the usages of the courts of equity.

SEC. 262. No receiver shall be appointed except in a suit actually commenced and pending, and after notice to all parties to be effected thereby, of the time and place of the application, the names of the proposed receiver, and of his proposed sureties, and of the proposed sureties of the applicant. Such notice shall state upon what papers the application is based, and be served upon the adverse party or solicitor, at least five days before the proposed hearing, and one additional day for every thirty miles of travel from the place where the application is to be made by the usually traveled route, or shall be published in the same manner as notices of the pendency of suits to non-resident defendants.

SEC. 263. Should the delay occasioned by giving the notice, provided for in the last preceding section, be hazardous to the rights of any party, the court or judge may, by order, direct the sheriff of the county in which such action is pending, to take temporary possession of the property, and shall appoint an early day for the hearing of the application, and if, at such hearing, the application is refused, restitution shall be made of the property [to the person] from whom the same was taken.

SEC. 264. Every order appointing a receiver shall require the applicant to give a bond conditioned to pay all damages which the other parties to the suit, or any of them may sustain, by reason of the appointment of the receiver in case it shall be finally directed that the order ought not to have been granted, and shall also require the receiver to give a bond conditioned to faithfully discharge his duties as receiver, and obey all orders of the court. The said bonds shall each run to the defendant and all adverse parties in interest, and be for the use of any party to the suit, and be in a penal sum equal to double the value of the property in question, and be executed by two or more sureties, to be approved by the court or judge making the appointment,

Where no receiver shall be appointed, &c.

Temporary possession.

What required of applicant.

and be filed in the county clerk's office; nor shall the same be considered executed until they are so filed.

Receiver.

SEC. 265. If a complainant shall desire the appointment of a receiver at the commencement of the action, he shall pray such appointment in his bill. If the occasion for a receiver shall arise while the suit is pending, the application shall be made by a petition entitled in the cause, signed and verified by the applicant, and setting forth the facts and circumstances making such appointment necessary or proper.

Objections.

SEC. 266. Any party to the suit may, upon the hearing of the application, show, by affidavit or otherwise, objections to the proposed sureties, and to the proposed receiver, and what is the value of the property to be taken possession of, and that a receiver ought not to be appointed. He may also nominate a person to be receiver, giving at the same time, the names of his proposed sureties. No person shall be appointed receiver who is party, solicitor, counsel, or in any manner interested in the suit.

Special directions.

SEC. 267. Every order appointing a receiver shall contain special directions in respect to his powers and duties, and upon application of any party to the suit, after due notice thereof, such further directions shall be made in that behalf by the court or judge as may, in the further progress of the cause become proper.

Receiver of any party, &c.

SEC. 268. Every receiver shall be considered the receiver of any party to the suit and no others.

Order, when void.

SEC. 269. Every order appointing a receiver without the notice provided for herein, except as otherwise provided by law, shall be void, and every such order heretofore made, under which the appointee has [not] possessed himself of the property in question, shall be suspended until an order, shall have been made, and the bonds executed and filed in accordance with the provisions of this title.

In court.

SEC. 270. When a decree shall be rendered in a suit in which a receiver has been appointed, and such decree shall not finally determine the rights of the parties, any one of them may apply to the court for the possession of the property and proceeds thereof, in the receiver's hands. If such

application be resisted, the matter may be referred to a master, to take and report to the court the testimony of the parties. And in the coming in of said report, the court shall, by order, award the possession of the property and the proceeds thereof, to the party entitled thereto; and thereupon, the receiver shall surrender the property and the proceeds thereof, to such party. All orders appointing receivers, giving them further directions and disposing of the property, may be appealed to the supreme court in the same manner as final orders and decrees.

SEC. 271. Whenever in the exercise of its authority, the court shall have ordered the deposit or delivery of money, or other thing, and the order is disobeyed, the court, in addition to punishing such disobedience as for contempt, may make an order requiring the sheriff to take the money or thing, and deposit or deliver it in conformity with the direction of the court; *Provided, however,* That no court or any judge thereof, shall have power to order any receiver to make lasting and valuable improvements on any property that may be in his hands by virtue of his receivership, excepting so far as may be necessary to prevent waste of the same while it is so in his hands.

Punishment.

TITLE XII.

Trial—Issue.

SEC. 272. Issues arising on the pleadings, where a fact or conclusion of law is maintained by one party and controverted by the other. They are of two kinds,—

Issues.

First, Of law.

Second, Of fact.

SEC. 273. An issue of law arises upon a demurrer to the petition, answer or reply, or to some part thereof.

Arises upon.

SEC. 274. An issue of fact arises,—

First, Upon material allegation in the petition denied by the answer.

Second, Upon a set-off or counter claim presented in the answer and denied by the reply.

Third, Upon material new matter in the answer or reply,

which shall be considered as controverted by the opposite party without further pleading.

Of fact.

SEC. 275. Issues, both of law and of fact, may arise upon different parts of the pleadings in the same action. In such cases, the issues of law must be first tried, unless the court otherwise direct.

Issues of law and fact.

SEC. 276. A trial is a judicial examination of the issues, whether of law or of fact, in an action.

A trial is.

SEC. 277. Issues of law must be tried by the court, unless referred, as provided in section two hundred and ninety-five. Issues of fact arising in actions for the recovery of money, or of specific real or personal property, shall be tried by a jury, unless a jury trial is waived, or a reference be ordered as hereinafter provided.

Issues, how tried.

Ditto.

SEC. 278. All other issues of fact shall be tried by the court, subject to its power to order an issue, or issues to be tried by a jury, or referred, as provided in this code.

TITLE XIII.

Trials by Jury.

Jury.

SEC. 279. The general mode of summoning, impanelling, challenging and swearing the jury shall be as provided by law.

Order of trial

SEC. 280. When the jury has been sworn, the trial shall proceed in the following order, unless the court for special reasons otherwise direct :

First, The plaintiff must briefly state his claim, and may briefly state the evidence by which he expects to sustain it.

Second, The defendant must then briefly state his defense, and may briefly state the evidence he expects to offer to support it.

Third, The party who would be defeated, if no evidence were given on either side, must first produce his evidence ; the adverse party will then produce his evidence.

Fourth, The parties will then be confined to rebutting evidence, unless the court, for good reasons in furtherance of justice, permits them to offer evidence in their original case.

Fifth, When the evidence is concluded, either party may

request instructions to the jury on points of law, which shall be given or refused by the court; which instructions shall be reduced to writing, if either party require it.

Sixth, The parties may then submit or argue the case to the jury. In the argument the party required first to produce his evidence shall have the opening and conclusion. If several defendants having separate defenses, appear by different counsel, the court shall arrange their relative order.

Seventh, The court may again charge the jury after the argument is concluded.

SEC. 281. Whenever, in the opinion of the court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body, under the charge of an officer, to the place, which shall be shown to them by some disinterested person appointed by the court for that purpose. While the jury are thus absent, no person other than the person so appointed, shall speak to them on any subject connected with the trial.

Jury to view
the place.

SEC. 282. When the case is finally submitted to the jury, they may decide in court or retire for deliberation. If they retire, they must be kept together, in some convenient place, under the charge of an officer until they agree upon a verdict, or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night or at their meals. The officer having them under his charge, shall not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, unless by order of the court, and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

Jury kept to-
gether.

SEC. 283. If the jury are permitted to separate, either during the trial, or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with or suffer themselves to be addressed by any other person, on the subject of the trial, and that it is their

Separation of
jury.

duty not to form or express any opinion thereon, until the cause is finally submitted to them.

Conducted into
court.

SEC. 284. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed as to any question of the law arising in the case, they may request the officer to conduct them to the court, where the information upon the point of law shall be given, and the court may give its recollection as to the testimony on the point in dispute, in the presence of or after notice to the parties or their counsel.

Discharged.

SEC. 285. The jury may be discharged by the court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.

Once tried again.

SEC. 286. In all cases where the jury are discharged during the trial, or after the case is submitted to them, it may be tried again immediately, or at a future time, as the court may direct.

Jury polled.

SEC. 287. When the jury has agreed upon their verdict, they must be conducted into court, their names called by the clerk, and the verdict rendered by the foreman. When the verdict is announced, either party may require the jury to be polled, which is done by the clerk, asking each juror if it is his verdict. If any one answers in the negative, the jury must again be sent out for further deliberation.

Any juror dis-
agrees.

SEC. 288. The verdict shall be written, signed by the foreman, and read by the clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagree, the jury must be sent out again; but if no disagreement be expressed, and neither party require the jury to be polled, the verdict is complete, and the jury shall be discharged from the case. If, however, the verdict be defective in form only, the same may, with the assent of the jury before they are discharged, be corrected by the court.

Verdict.

SEC. 289. The verdict of a jury is either general or

special. A general verdict is that by which they pronounce, Districts, general or special. generally, upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury finds the facts only. It must present the facts as established by the evidence, and not the evidence to prove them; and they must be so presented as that nothing remains to the court but to draw from them conclusions of law.

SEC. 290. In every action for the recovery of money Court to direct jury. only, or specific real property, the jury in their discretion, may render a general or special verdict. In all other cases, the court may direct the jury to find a special verdict, in writing, upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk, and entered on the journal.

SEC. 291. When the special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court may give judgment accordingly. Special inconsistent with general verdict.

SEC. 292. When by the verdict either party is entitled Jury to assess amount. to recover money of the adverse party, the jury in their verdict must assess the amount of recovery.

TITLE XIV.

Trial by the Court.

SEC. 293. The trial by jury may be waived by the Jury trial waived, when. parties in actions arising on contracts, and with the assent of the court, in other actions, in the following manner:

First, By the consent of the party appearing, when the other party fails to appear at the trial by himself, or attorney.

Second, By written consent in person or by attorney filed with the clerk.

Third, By oral consent in open court entered on the journal.

SEC. 294. Upon the trial of questions of fact by the

Questions of
fact.

court, it shall not be necessary for the court to state its finding, except generally, for the plaintiff or defendant, unless one of the parties request it, with the view of excepting to the decision of the court upon the questions of law involved in the trial; in which case the court shall state in writing the conclusions of fact found, separately from the conclusions of law.

Trial by Referees.

Issues, when
referred,

SEC. 295. All or any of the issues in the action, whether of fact or of law, or of both, may be referred, upon the written consent of the parties, or upon their oral consent in court entered upon the journal.

Court may di-
rect a reference,
when.

SEC. 296. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in either of the following cases :

First, Where the trial of an issue of fact shall require the examination of mutual accounts, or where the account is on one side only, and it shall be made to appear to the court that it is necessary that the party on the other side should be examined as a witness to prove the account; in which cases the referees may be directed to hear and report upon the whole issue, or upon any specific question of fact involved therein.

Second, Where the taking of an account shall be necessary for the information of the court before judgment, in cases which may be determined by the court, or for carrying a judgment into effect.

Third, When a question of fact, other than upon the pleadings, shall arise upon motion or otherwise in any stage of an action.

Trial before
referees, how
conducted.

SEC. 297. The trial before referees is conducted in the same manner as a trial by the court. They have the same power to summon and enforce the attendance of witnesses, and to grant adjournments, as the court upon such trial. They must state the facts found and conclusion of law, separately, and their decision must be given, and may be excepted to and reviewed in like manner. The report of the

referees upon the whole issue, stands as the decision of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the court. When the reference is to report the facts, the report has the effect of a special verdict.

SEC. 298. In all cases of reference, the parties, except when an infant may be a party, may agree upon a suitable person or persons, not exceeding three, and the reference shall be ordered accordingly; and if the parties do not agree, the court shall appoint one or more referees, not exceeding three, who shall be free from exception. Parties, when to agree on referees.

SEC. 299. A reference, as provided in this title, cannot be ordered by a probate court, except by consent of parties, to the reference and referees. Nor ordered by probate court.

SEC. 300. It shall be the duty of the referees to sign any true exceptions taken to any order or decision by them made in the case, and return the same, with their report, to the court making the reference. Duty of referees.

SEC. 301. A judge in vacation, upon the written consent of the parties, may make an order of reference, which the court, of which he is a member, could make in term time. In such case, the order of reference shall be made on the written agreement of the parties to refer, and shall be filed with the clerk of the court, with the other papers in the case. Judge in vacation may make order.

SEC. 302. The referees must be sworn or affirmed, well and faithfully to hear and examine the cause, and to make a just and true report therein, according to the best of their understanding. The oath may be administered by any person authorized to take depositions. Referees sworn.

SEC. 303. The referees shall be allowed such compensation for their services as the court may deem just and proper, which shall be taxed as a part of the costs in the case. Compensation.

Exceptions.

SEC. 304. An exception is an objection taken to a decision of the court upon a matter of law. Exception.

SEC. 305. The party objecting to the decision, must

Exception,
when made.

except at the time the decision is made, and time may be given to reduce the exception to writing, but not beyond the term.

No particular
form.

SEC. 306. No particular form of exception is required. The exception must be stated, with so much of the evidence as is necessary to explain it, and no more, and the whole as briefly as possible.

Grounds of ob-
jection appear on
the record.

SEC. 307. When the decision objected to is entered on the record, and the grounds of objection appear on the entry, the exception may be taken by the party causing to be noted, at the end of the decision, that he excepts.

Decision not
entered.

SEC. 308. When the decision is not entered on the record, or the grounds of objection do not sufficiently appear in the entry, the party excepting must reduce his exception to writing and present it to the court for its allowance. If true, it shall be the duty of a majority of the judges composing the court, or of the judge or court before whom the case was or is being tried, to allow and sign it, whereupon it shall be filed with the pleadings as a part of the record, but not spread at large upon the journal. If the writing is not true, the court shall correct it, or suggest the correction to be made, and it shall then be signed as aforesaid.

All exceptions
allowed.

SEC. 309. All exceptions to the rulings of the court shall be allowed and noted in the clerk's minutes of the case, and no exception shall be refused on the ground that it is frivolous or immaterial to the question at issue.

Exceptions
withdrawn.

SEC. 310. Exceptions taken to the decision of any court of record may, by leave of such court, be withdrawn from the files by the party taking the same, at any time before proceedings in error are commenced, and before the exceptions are recorded.

TITLE XV.

New Trial.

New trial,
when granted.

SEC. 311. A new trial is a re-examination in the same court of an issue of fact after a verdict by a jury, report of a referee, or a decision by the court. The former verdict, report or decision shall be vacated and a new trial granted

on the application of the party aggrieved, for any of the following causes affecting materially the substantial rights of such party :

First, Irregularity in the proceedings of the court, jury, referee or prevailing party, or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial.

Second, Misconduct of the jury or prevailing party.

Third, Accident or surprise, which ordinary prudence could not have guarded against.

Fourth, Excessive damages, appearing to have been given under the influence of passion or prejudice.

Fifth, Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract, or for the injury or detention of property.

Sixth, That the verdict, report or decision is not sustained by sufficient evidence, or is contrary to law.

Seventh, Newly discovered evidence material for the party applying, which he could not with reasonable diligence have discovered and produced at trial.

Eighth, Error of law occurring at the trial, and excepted to by the party making the application.

SEC. 312. A new trial shall not be granted on account of the smallness of the damages in an action for an injury to the person or reputation, nor any other action where the damages shall equal the actual pecuniary injury sustained. When not granted.

SEC. 313. The application for a new trial must be made at the term the verdict, report or decision is rendered, and except for the cause of newly discovered evidence, material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial, shall be within three days after the verdict or decision was rendered, unless unavoidably prevented. Application when made.

SEC. 314. The application must be by motion, upon written grounds, filed at the time of making the motion. The causes enumerated in subdivisions two, three and seven of section three hundred and eleven, must be sustained by

How made.

affidavits showing their truth, and may be controverted by affidavits.

Application
may be made by
petition.

SEC. 315. Where the grounds for a new trial could not, with reasonable diligence, have been discovered before, but are discovered after the term at which the verdict, report of referee or decision was rendered or made, the application may be made by petition filed as in other cases, on which a summons shall issue, be returnable, and served or publication made, as prescribed in section seventy-eight. The facts stated in the petition shall be considered as denied without answer, and if the service shall be complete in vacation, the case shall be heard and summarily decided at the ensuing term. The case shall be placed on the trial docket, and the witnesses shall be examined in open court, or their depositions taken as in other cases, but no such petition shall be filed more than one year after the final judgment was rendered.

General Provisions.

When damages
are recoverable.

SEC. 316. Whenever damages are recoverable, the plaintiff may claim and recover any rate of damages to which he may be entitled for the cause of action established.

Provisions of
title apply, &c.

SEC. 317. The provisions of this title respecting trials by jury, apply, so far as they are in their nature applicable, to trials by the court.

TITLE XVI.

Time of Trial.

Clerks shall
keep five books.

SEC. 318. The clerks of courts of record shall keep at least five books, to be called the appearance docket, the trial docket, the journal, the record, and execution docket.

Appearance
docket.

SEC. 319. On the appearance docket he shall enter all actions in order in which they are brought, the date of the summons, the time of the return thereof by the officer, and his return thereon, the time of filing the petition, all subsequent pleadings, and an abstract of all orders and judgments of the court.

SEC. 320. The trial docket shall be made out by the clerk of the court, at least twelve days before the first day of each term of the court, and the actions shall be set for particular days, in the order in which the issues were made up, whether of law or of fact, and so arranged that the cases set for each day shall be tried as nearly as may be on that day. For the purpose of arranging said docket, an issue shall be considered as made up when either party is in default of pleading.

Trial docket.

SEC. 321. The trial of an issue of fact, and the assessment of damages in any case, shall be in the order in which they are placed on the trial docket, unless, by consent of the parties, or order of the court, they are continued or placed at the foot of the docket. The time of hearing all other cases shall be in the order in which they are placed on the docket, unless the court, in its discretion, shall otherwise direct. The court may, in its discretion, hear at any time, a motion, and may, by rule, prescribe the time for hearing motions.

Trial, in order in which they are placed on docket.

SEC. 322. Actions shall be triable at the first term of the court, after the issues therein, by the times fixed for pleading, are, or should have been, made up; and when, by the times fixed for pleading, the issues are, or should have been, made up during a term, such actions shall be triable at that term. When the issues are, or should have been, made up, either before or during a term of court, but after the period for preparing a trial docket of such term, the clerk, if required by the court, shall place such actions on the trial docket of that term.

Actions triable at first term.

SEC. 323. In actions wherein default is made, judgment shall be rendered at the first term after the service of process, provided, service shall be made not less than ten days before the term.

In actions where default is made.

SEC. 324. The clerk shall make out a copy of the trial docket for the use of the bar before the first day of the term of court.

The clerk shall make out a copy.

TITLE XVII.

Evidence—Competency of Witnesses.

Who are com-
petent witnesses.

SEC. 325. Every human being of sufficient capacity to understand the obligations of an oath, is a competent witness in all cases, civil and criminal, except as otherwise herein declared. The following persons shall be incompetent to testify :

First, Persons of unsound mind at the time of their production.

Second Indians and negroes who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them intelligently and truly.

Third Husband and wife, concerning any communication made by one to the other during the marriage, whether called as a witness while that relation exists or afterwards.

Fourth, An attorney, concerning any communication made to him by his client in that relation or his advice thereon, without the client's consent in open court or in writing produced in court.

Fifth, A clergyman or priest, concerning any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs, without the consent of the person making the confession.

Ditto.

SEC. 326. No person having a direct legal interest in the result of any civil cause or proceeding, [shall] be a competent witness therein, when the adverse party is an executor, administrator, or legal representative of a deceased person.

Facts which
exclude testi-
mony.

SEC. 327. Facts which have heretofore caused the exclusion of testimony, may still be shown for the purpose of lessening [effecting] its credibility.

Husband and
wife.

SEC 328. The husband can in no case be a witness against the wife, nor the wife against the husband, except in a criminal proceeding for a crime committed by the one against the other, but they may in all criminal prosecutions be witnesses for each other.

Ditto.

SEC. 329. Neither husband nor wife can be examined in any case as to any communication made by the one to the

other while married, nor shall they, after the marriage relation ceases, be permitted to reveal, in testimony, any such communication made while the marriage existed.

SEC. 330. No practicing attorney, counselor, physician, surgeon, minister of the gospel, or priest of any denomination, shall be allowed in giving testimony, to disclose any confidential communication, properly entrusted to him in his professional capacity, and necessary and proper to enable him to discharge the functions of his office according to the usual course of practice or discipline.

Who not allowed to give testimony.

SEC. 331. The prohibitions in the preceding sections do not apply to cases where the party in whose favor the respective provisions are enacted, waives the rights thereby conferred.

Do not apply in certain cases.

SEC. 332. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

Public officer not examined.

SEC. 333. A witness is not excused from answering a question upon the mere ground that he would be thereby subjected to civil liability.

Witness not excused, &c.

SEC. 334. But when the matter sought to be elicited would tend to render him criminally liable, or to expose him to public ignominy, he is not compelled to answer, except as provided in the next section.

Not compelled to answer.

SEC. 335. A witness may be interrogated as to his previous conviction for felony. But no other proof of such conviction is competent except the record thereof.

Previous conviction.

SEC. 336. When part of an act, declaration, conversation, or writing, is given in evidence by one party, the whole on the same subject may be inquired into by the other; thus when a letter is read, all other letters on the same subject between the same parties may be given, and when a detached act, declaration, conversation or writing is given in evidence, any other act, declaration or writing which is necessary to make it fully understood, or to explain the same, may also be given in evidence.

When part of an act, &c. is given in testimony.

SEC. 337. When an instrument consists partly of

Writing controls printing.

writing and partly of printed form, the former controls the latter, where the two are inconsistent.

When terms of agreement have a different sense.

SEC. 338. When the terms of an agreement have been intended in a different sense by the parties to it, that sense is to prevail against either party in which he had reason to suppose the other understood it.

Historical books, &c., presumptive evidence.

SEC. 339. Historical works, books of science or art, and published maps or charts, when made by persons indifferent between the parties, are presumptive evidence of facts of general notoriety or interest. [And in case the answer of the garnishee shall not be satisfactory to the plaintiff, he may take issue thereon by alleging that the said garnishee is indebted to or has property in his hands belonging to the defendant, and such allegation shall make an issue to be tried like any other issue of fact and judgment thereon enforced like any other judgment.]

Proved by other evidence.

SEC. 340. When a subscribing witness denies, or does not recollect the execution of the instrument to which his name is subscribed as such witness, its execution may be proved by other evidence.

Hand-writing.

SEC. 341. Evidence respecting hand-writing may be given by comparisons made by experts or by jury, with writings of the same person which are proved to be genuine

Entries, &c., of a person deceased

SEC. 342. The entries and other writings of a person deceased, made at or near the time of the transaction, and in a position to know the facts therein stated, are presumptive evidence of such facts, when the entry was made against the interest of the person so making it or when made in a professional capacity or in ordinary course of professional conduct, or when made in the performance of a duty specially enjoined by law.

Books of account, when receivable in evidence.

SEC. 343. Books of account, containing charges by one party against the other, made in the ordinary course of business, are receivable in evidence only under the following circumstances, subject to all just exceptions as to their credibility:

First, The books must show a continuous dealing with

persons generally, or several items of charges at different times against the other party, in the same book.

Second, It must be shown, by the party's oath, or otherwise, that they are his books of original entries.

Third, It must be shown, in like manner, that the charges were made at or near the time of the transaction therein entered, unless satisfactory reasons appear for not making such proof.

Fourth, The charges must also be verified by the party or the clerk who made the entries, to the effect that they believed them just and true, or a sufficient reason must be given why the verification is not made.

SEC. 344. Every private writing, except a last will and testament, after being acknowledged or proved and certified in the manner prescribed for the proof or acknowledgment of conveyances of real property, may be read in evidence without further proof.

Every private writing.

SEC. 345. The judge of the court is a competent witness for either party, and may be sworn upon the trial. But in such a case it is in his discretion to order the trial to be postponed or suspended, and to take place before another judge.

Judge of court is competent.

SEC. 346. The usual protest by a notary public, without proof of his signature or a notarial seal, is evidence of the dishonor and notice of a bill of exchange or promissory note.

The usual protest by a notary public.

TITLE XVIII.

Article 1—Means of Producing Witnesses.

SEC. 347. The clerks of the several courts, and judges of the probate courts, shall, on application of any person having a cause or any matter pending in the court, issue a subpoena for witnesses under the seal of the court, inserting all the names required by the applicant, in one subpoena, which may be served by the sheriff, coroner, or any constable of the county, or by the party, or any other person. When a subpoena is not served by a sheriff, coroner or constable,

Subpoena, by whom served.

proof of the service shall be shown by the affidavit; but no costs of service of the same shall be allowed, except when served by an officer.

Directed to person named.

SEC. 348. The subpoena shall be directed to the person therein named, requiring him to attend at a particular time and place, to testify as a witness; and it may contain a clause directing the witness to bring with him any book, writing, or other thing under his control, which he is bound by law, to produce as evidence.

Issued by the officer.

SEC. 349. When the attendance of a witness, before any officer authorized to take depositions is required, the subpoena shall be issued by the officer.

Served by reading, &c.

SEC. 350. The subpoena shall be served either by reading, or by copy delivered to the witness, or left at his usual place of residence; but such copy need not contain the name of any other witness.

Witness, when not obliged to attend.

SEC. 351. A witness shall not be obliged to attend for examination on the trial of a civil action, except in the county of his residence, nor to attend to give his deposition out of the county where he resides, or where he may be when the subpoena is served upon him.

May demand his fees.

SEC. 352. A witness may demand his traveling fees, and fee for one day's attendance, when the subpoena is served upon him, and if the same be not paid, the witness shall not be obliged to obey the subpoena. The fact of such a demand and non-payment shall be stated in the return.

Disobedience.

SEC. 353. Disobedience of a subpoena, or a refusal to be sworn, or to answer as a witness, or to subscribe a deposition, when lawfully ordered, may be punished as a contempt of the court or officer by whom his attendance or testimony is required.

When a witness fails to attend.

SEC. 354. When a witness fails to attend in obedience to a subpoena, (except in case of a demand and failure to pay his fees,) the court or officer before whom his attendance is required, may issue an attachment to the sheriff, coroner or constable of the county, commanding him to arrest and bring the person therein named before the court or officer, at a

time and place to be fixed in the attachment, to give his testimony, and answer for the contempt. If the attachment be not for immediately bringing the witness before the court or officer, a sum shall be fixed in which the witness may give an undertaking with surety for his appearance. Such sum shall be indorsed on the back of the attachment, and if no sum is so fixed and indorsed, it shall be one hundred dollars. If the witness be not personally served, the court may, by a rule, order him to show cause why an attachment should not issue against him.

SEC. 355. The punishment for the contempt mentioned in section three hundred and fifty-three, shall be as follows: Punishment for contempt. When the witness fails to attend in obedience to the subpœna, (except in case of a demand and failure to pay his fees,) the court or officer may fine the witness in a sum not exceeding fifty dollars. In other cases, the court or officer may fine the witness in a sum not exceeding fifty dollars nor less than five dollars, or may imprison him in the county jail, there to remain until he shall submit to be sworn, to testify, or give his deposition. The fine imposed by the court shall be paid into the county treasury, and that imposed by the officer shall be for the use of the party for whom the witness was subpœnaed. The witness shall also be liable to the party injured, for any damages occasioned by his failure to attend, or his refusal to be sworn, to testify or give his deposition.

SEC. 356. A witness so imprisoned by an officer before whom the deposition is being taken, may apply to a judge of a supreme court, district court, or probate court, who shall have power to discharge him if it appears that his imprisonment is illegal. Witness may apply to judge.

SEC. 357. If a witness conceal himself, or in any other manner attempt to avoid being personally served with a subpœna, any sheriff or constable, having the subpœna, may use all necessary and proper means to serve the same, and for that purpose may break into any building, or other place where the witness is to be found, having first made known his business and demanded admittance. If a witness conceal himself.

Commitment
of a witness.

SEC. 358. Every attachment for the arrest or order of commitment to prison of a witness by a court or officer, pursuant to this title, must be under the seal of the court or officer, if he have an official seal, and must specify particularly the cause of the arrest or commitment, and may be directed to the sheriff, coroner, or any constable of the county where such witness resides, or may be at the time, and shall be executed by committing him to the jail of such county, and delivering a copy of the order to the jailer.

Required to be
produced.

SEC. 359. A person confined in any prison in this territory, may, by order of any court of record, be required to be produced, for oral examination in the county where he is imprisoned; but in all other cases, his examination must be by deposition.

While deposi-
tion being taken.

SEC. 360. While a prisoner's deposition is being taken, he shall remain in the custody of the officer having him in charge, who shall afford reasonable facilities for the taking of the deposition.

Witness not
liable.

SEC. 361. A witness shall not be liable to be sued in a county in which he does not reside, by being served with a summons in such county, while going, returning or attending in obedience to the subpoena.

May demand
his fees.

SEC. 362. At the commencement of each day after the first day, a witness may demand his fees for that day's attendance in obedience to a subpoena, and if the same be not paid, he shall not be required to remain.

Shall be sworn

SEC. 363. Before testifying, the witness shall be sworn to testify the truth, the whole truth, and nothing but the truth. The mode of administering the oath shall be such as is the most binding upon the conscience of the witness.

Continuance.

SEC. 364. In addition to the above remedies, if a party to a suit in his own right, on being duly subpoenaed, fail to appear and give testimony, the other party may, at his option, have a continuance of the cause, as in cases of other witnesses, and at the cost of the delinquent.

ARTICLE II.

Mode of Taking Testimony of Witnesses.

SEC. 365. The testimony of witnesses may be taken in Testimony may be taken.
three modes.—

First, By affidavit.

Second, By deposition.

Third, By oral examination.

SEC. 366. An affidavit is a written declaration under Affidavit.
oath, made without notice to the adverse party.

SEC. 367. A deposition is a written declaration, under Deposition.
oath, made upon notice to the adverse party for the purpose
of enabling him to attend and cross-examine; or, upon
written interrogatories.

SEC. 368. An oral examination is an examination in Oral examination.
the presence of the jury or tribunal which is to decide the
fact or act upon it, the testimony being heard by the jury or
tribunal from the lips of the witness.

Affidavit.

SEC. 369. The affidavit may be used to verify a Affidavit may be used.
pleading, to prove the service of a summons, notice, or other
process in the action, to obtain a provisional remedy, an
examination of a witness, a stay of proceedings, or upon a
motion, and in any other case permitted by law.

SEC. 370. An affidavit may be made in and out of this May be made
territory, before any person authorized to take depositions,
and must be authenticated in the same way, except as
provided in section one hundred and twenty-one.

ARTICLE III.

Depositions.

SEC. 371. The depositions of any witness may be used Depositions may be used.
only in the following cases:

First, When the witness does not reside in the county
where the action or proceeding is pending, or is sent for trial
by change of venue, or is absent therefrom.

Second, When from age, infirmity or imprisonment, the
witness is unable to attend the court, or is dead.

Third, When the testimony is required upon a motion, or

in any other case where the oral examination of the witness is not required.

Either party
may take testi-
mony.

SEC. 372. Either party may commence taking testimony by depositions, at any time after service upon the defendant.

Officers who may take them.

Who may take

SEC. 373. Depositions may be taken in this territory before a judge or clerk of the supreme or district court, or before a probate judge, justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, or before a master, commissioner, or any person empowered by a special commission; but depositions taken in this territory, to be used therein, must be taken by an officer or person whose authority is derived within the territory.

Taken out of
territory.

SEC. 374. Depositions may be taken out of the territory by a judge, justice or chancellor of any court of record, a justice of the peace, notary public, mayor or chief magistrate of any city or town corporate, a commissioner appointed by the governor of this territory to take depositions, or any person authorized by a special commission from this territory.

Officer must
not be.

SEC. 375. The officer before whom depositions are taken, must not be a relative or attorney of either party, or otherwise interested in the event of an action or proceeding.

Who author-
ized to grant.

SEC. 376. Any court of record of this territory, or any judge thereof, is authorized to grant a commission to take depositions within or without the territory. The commission must be issued to a person or persons therein named by the clerk, under the seal of the court granting the same, and depositions under it must be taken upon written interrogatories unless, the parties otherwise agree.

Manner of Taking and Authenticating Them.

Written notice
shall be served.

SEC. 377. Prior to taking of any deposition, unless taken under a special commission, a written notice, specifying the action or proceeding, the name of the court or tribunal in which it is to be used, and the time and place of taking the same, shall be served upon the adverse party, his agent or attorney of records, or left at his usual place of abode. The notice shall be served so as to allow the adverse party sufficient time by the usual route of travel to attend,

and one day for preparation, exclusive of Sundays and the day of service, and the examination may, if so stated in the notice, be adjourned from day to day.

SEC. 378. When the party against whom the deposition is to be read, is absent from, or a non-resident of the territory, and has no agent or attorney of record therein, he may be notified of the taking of the depositions by publication. The publication must be made three consecutive weeks, in some newspaper printed in the county in which the action or proceeding is pending, or if there be no paper printed in the county, then in some newspaper printed in this territory of general circulation in that county. The publication must contain all that is required in a written notice, and may be proved in the manner prescribed in section seventy-nine.

Publication.

SEC. 379. The deposition shall be written in the presence of the officer taking the same, either by the officer, the witness, or some disinterested person, and subscribed by the witness.

Deposition shall be written.

SEC. 380. The deposition so taken shall be sealed up and indorsed with the title of the cause and the name of the officer taking the same, and by him addressed and transmitted to the clerk of the court where the action or proceeding is pending. It shall remain under seal until opened by the clerk by order of the court, or at the request of a party to the action or proceeding, or his attorney.

Sealed and endorsed.

SEC. 381. Depositions taken pursuant to this article, shall be admitted in evidence on the trial of any civil action or proceeding pending before any justice of the peace, mayor or other judicial officer of a city, or town corporate, or before any arbitrators or referees, and such deposition shall be sealed up, indorsed with the title of the action or proceeding, the name of the officer taking the same, and addressed and transmitted by such officer to such justice, mayor or other judicial officer, arbitrators or referees.

Admitted in evidence.

SEC. 382. When a deposition has once been taken, it may be read in any stage of the same action or proceeding, or any in other action or proceeding, upon the same matter between the same parties, subject, however, to all such

May be read.

exceptions as may be taken thereto under the provisions of this title.

Authentication
necessary.

SEC. 383. Depositions taken pursuant to this article by any judicial or other officer herein authorized to take depositions, having a seal of office, whether resident of this territory or elsewhere, shall be admitted in evidence upon the certificate and signature of such officer, under seal of the court of which he is an officer, or his official seal, and no other or further act of authentication shall be required. If the officer taking the same have no official seal, the deposition, if not taken in this territory, shall be certified and signed by such officer, and shall be further authenticated, either by parol proof adduced in court, or by the official certificate and seal of any secretary or other officer of state keeping the great seal thereof, or by the clerk or prothonotary of the court having a seal, attesting that such judicial or other officer was at the time of taking the same, within the meaning of this title, authorized to take the same. But if the deposition be taken within this territory, by an officer having no seal, or within or without this territory under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commission taking the same.

Certificate.

SEC. 384. The officer taking the deposition, shall annex thereto a certificate, showing the following facts:

First, That the witness was first sworn to testify the truth, the whole truth, and nothing but the truth.

Second, That the deposition was reduced to writing by some proper person (naming him.)

Third, That the deposition was written and subscribed in the presence of the officer certifying thereto.

Fourth, That the deposition was taken at the time and place specified in the notice.

When not read
in court.

SEC. 385. A deposition shall not be read in court if the party objecting thereto shall show to the satisfaction of the court that the attendance of the witness can be procured. *Provided* that the party offering the deposition shall not thereby be compelled to go into trial without reas-

Proviso.

onable time to procure said witness, if he was not aware that the attendance of such witness could be had.

SEC. 386. Every deposition intended to be read in evidence on the trial, must be filed at least one day before the day of trial. Must be filed.

Exceptions to Depositions.

SEC. 387. Exceptions to depositions shall be in writing, specifying the grounds of objection, and filed with the papers in the cause. Exceptions.

SEC. 388. No exception other than for incompetency or irrelevancy, shall be regarded, unless made and filed before the commencement of the trial. What for.

SEC. 389. The court shall, on motion of either party, hear and decide the questions arising on exceptions to depositions, before the commencement of the trial. Court shall decide.

SEC. 390. Errors of the court, in its decisions upon exceptions to depositions, are waived unless excepted to. Errors of court

Admissions, Inspections, and Production of Documents.

SEC. 391. Either party may exhibit to the other or to his attorney, at any time before the trial, any paper or document material to the action, and request an admission in writing of its genuineness. If the adverse party or his attorney, fail to give the admission in writing within four days after the request, and if the party exhibiting the paper or document be afterwards put to any cost or expense to prove its genuineness, and the same be finally proved or admitted on the trial, such costs and expenses, to be ascertained at the trial, shall be paid by the party refusing to make the admission, unless it shall make it appear to the satisfaction of the court, that there were good reasons for the refusal. Admissions.

SEC. 392. Either party, or his attorney, may demand of the adverse party, an inspection and copy, or permission to take a copy of a book, paper or document in his possession or under his control, containing evidence relating to the merits of the action or defense therein. Such demand Demand for documents.

shall be in writing, specifying the book, paper or document, with sufficient particularity to enable the other party to distinguish it, and if compliance with the demand, within four days be refused, the court or judge, on motion and notice to the adverse party, may, in their discretion, order the adverse party to give the other, within a specified time, an inspection and copy, or permission to take a copy of such book, paper or document; and on failure to comply with such order, the court may exclude the paper or document from being given in evidence, or, if wanted as evidence by the party applying, may direct the jury to presume it to be such as the party by affidavit alleges it to be. This section is not to be construed to prevent a party from compelling another to produce any book, paper, or document, when he is examined as a witness.

Copy of writings.

SEC. 393. Either party, or his attorney, if required, shall deliver to the other party, or his attorney, a copy of any deed, instrument or other writing, whereon the action or defense is founded, or which he intends to offer in evidence at the trial. If the plaintiff or defendant shall refuse to furnish the copy or copies required, the party so refusing shall not be permitted to give in evidence at the trial, the original, of which a copy has been refused. This section shall not apply to any paper, a copy of which is filed with a pleading.

Laws admitted as evidence.

SEC. 394. Printed volumes, in volumes of statutes, codes, or other written law, enacted by any other state or territory, or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law, in the courts or tribunals of such state, territory or government, shall be admitted by the courts and officers of this territory, on all occasions, as presumptive evidence of such laws. The unwritten or common law of any other state, territory or foreign government, may be proved as facts by parol evidence; and the books of reports of cases adjudged in their courts, may also be admitted as presumptive evidence of such law.

SEC. 395. The supreme or district court may, by rule, require the production of any papers or books which are material to the just determination of any cause pending before it, for the purpose of being inspected and copied by or for the party thus calling for them. The court may require papers.

SEC. 396. The petition for that purpose must state the facts expected to be proved by such books or papers, and that, as the petitioner believes, such books and papers are under the control of the party against whom the rule is sought, and must show wherein they are material. The rule shall thereupon be granted to produce the books and papers, or show cause to the contrary, if the court deem such rule expedient and proper. Petition what to state

SEC. 397. On failing to obey the rule, or show sufficient cause of such failure, the same consequences shall ensue as if the party had failed to appear and testify, when subpoenaed by the party now calling for the books and papers. Failure to obey the rule.

SEC. 398. Though a writing called for by one party is by the other produced, the party thus calling for it, is not obliged to use it as evidence in the case. Not obliged to use.

ARTICLE IV.

General Provisions.

SEC. 399. The posting up of or service of any notice or other paper required by law, may be proved by the affidavit of any competent witness, attached to a copy of said notice or paper, and made within six months of the time of such posting up. Posting up. how proved.

SEC. 400. A copy of the field notes of any county surveyor, or a plat made by him and certified under oath as correct, may be received as evidence to show the shape or dimensions of a tract of land, or any other fact whose ascertainment requires only the exercise of scientific skill or calculation. Field notes.

SEC. 401. Such proof so made may be perpetuated and preserved for future use by filing the papers above mentioned in the office of the judge of probate, and the original Proof how perpetuated.

affidavit appended to the notice or paper, if there be one, and if not, the affidavit by itself, is presumptive evidence of the facts stated therein, but does not preclude other modes of proof now held sufficient.

Any other fact
how proved.

SEC. 402. Any other fact which is required to be shown by affidavit, and which may be required for future use in any action or other proceeding may be proved by pursuing the course above indicated, as nearly as the circumstances of the case will admit.

Certified copies

SEC. 403. Duly certified copies of all records and entries or papers belonging to any public office, or by authority of law filed to be kept therein, shall be evidence in all cases of equal credibility with the original records or papers so filed.

Officer having
custody.

SEC. 404. Every officer having the custody of a public record or writing, is bound to give any person on demand a certified copy thereof, on payment of the legal fees therefor.

Certificate of
officer.

SEC. 405. The certificate of a public officer that he has made diligent and ineffectual search for a paper in his office, is of the same efficacy in all cases as if such officer had personally appeared and sworn to such facts.

Duplicate re-
ceipt.

SEC. 406. The usual duplicate receipt of the receiver of any land office, or, if that be lost or destroyed, or beyond the reach of the party, the certificate of such receiver, that the books of his office show the sale of a tract of land to a certain individual, is proof of title equivalent to a patent against all but the holder of an actual patent.

Judicial record
how proved.

SEC. 407. A judicial record of this territory or of any other federal court of the United States, may be proved by the producing of the original, or by a copy thereof, certified by the clerk or the person having the legal custody thereof, authenticated by his seal of office if he have one.

That of a sis-
ter state proved.

SEC. 408. That of a sister state may be proved by the attestation of the clerk and the seal of the court annexed, if there be a seal, together with a certificate of a judge, chief justice, or presiding magistrate, that the attestation is in due form of law.

SEC. 409. The official certificate of a justice of the

peace of any of the United States, to any judgment, and the preliminary proceeding before him, supported by the official certificate of the clerk of any court of record within the county in which such justices reside, stating that he is an acting justice of the peace of that county, and that the signature of his certificate is genuine, is sufficient evidence of such proceedings and judgment. Certificate of signature sufficient.

SEC. 410. Copies of records and proceedings in the courts of a foreign country may be admitted in evidence upon being authenticated as follows: Copies, when admitted as evidence.

First, By the official attestation of the clerk or officer in whose custody such records are legally kept.

Second, By certificate of one of the judges or magistrates of such court, that the person so attesting is the clerk or officer legally intrusted with the custody of such records, and that the signature to his attestation is genuine.

Third, By the official certificate of the officer who has the custody of the principal seal of the government under whose authority the court is held, attested by said seal stating that such court is duly constituted, specifying the general nature of its jurisdiction and verifying the seal of the court.

SEC. 411. Acts of the executive of the United States or of this territory, or of any state in the union, or of a foreign government, are proved by the records of the state department of the respective governments, or by public documents purporting to have been printed by order of the legislatures of those governments respectively, or by either branch thereof. Acts, how proved.

SEC. 412. The proceedings of the legislature of this territory, or any state of the union, or of the United States, or of any foreign government, are proved by the journals of those bodies, respectively, or of either branch thereof, and either by copies officially certified by the clerk of the house in which the proceedings were had, or by a copy purporting to have been printed by their order. Proceedings, how proved.

SEC. 413. Printed copies of the statute laws of this territory, or any of the United States, or of congress, or of Printed laws as evidence.

any foreign government, purporting or proved to have been published under authority thereof, or proved to be commonly admitted as evidence of the existing laws in the courts of such state or government, shall be admitted in the courts of this territory as presumptive evidence of such law.

Public seal evidence.

SEC. 414. The public seal of the territory or county affixed to a copy of a written law or other public writing, is also admissible as evidence of such law or writing respectively. The unwritten law of any other state or government may be proved as fact by parol evidence, and also by the books of reports of cases adjudged in their courts.

ARTICLE V.

Proceedings to Perpetuate Testimony.

Testimony perpetuated.

SEC. 415. The testimony of a witness may be perpetuated in the following manner :

Applicant shall file petition.

SEC. 416. The applicant shall file in the office of the clerk of the district court, a petition, to be verified, in which shall be set forth, specially, the subject matter relative to which testimony is to be taken, and the names of the persons interested, if known to the applicant; and if not known, such general description as he can give of such persons, as heirs, devisees, alienees or otherwise. The petition shall also state the names of the witnesses to be examined, and the interrogatories to be propounded to each; that the applicant expects to be a party to an action in a court of this territory in which such testimony will, as he believes, be material, and the obstacles preventing the immediate commencement of the action, where the applicant expects to be the plaintiff.

Order, &c.

SEC. 417. The court or a judge thereof, may forthwith make an order allowing the examination of such witnesses. The order shall prescribe the time and place of the examination, how long the parties interested shall be notified thereof, and the manner in which they shall be notified.

Cross interrogatories.

SEC. 418. When it appears satisfactorily to the court or judge that the parties interested cannot be personally

notified, such court or judge shall appoint a competent attorney to examine the petition and prepare and file cross interrogatories to those contained therein. The witnesses shall be examined upon the interrogatories of the applicant, and upon cross interrogatories, where they are required to be prepared, and no others shall be propounded to them; nor shall any statement be received which is not responsive to some one of them. The attorney filing the cross interrogatories shall be allowed a reasonable fee therefor, to be taxed in the bill of costs.

SEC. 419. Such depositions shall be taken before some one authorized by law to take depositions, or before some one specially authorized by the court or judge, and shall be returned to the clerk's office of the court in which the petition was filed. Depositions, how taken.

SEC. 420. The court or judge, if satisfied that the depositions have been properly taken, and, as herein required, shall approve the same and order them to be filed; and, if a trial be had between the parties named in the petition, or their priores or successors in interest, such depositions or certified copies thereof may be given in evidence by either party, where the witnesses are dead or insane, or where their attendance for oral examination cannot be obtained or required; but such depositions shall be subject to the same objections for irrelevancy and incompetency as may be made to depositions taken pending an action. Court shall approve.

SEC. 421. The applicant shall pay the costs of all proceedings under this article. Applicant shall pay costs.

TITLE XIX.

Judgment.

SEC. 422. A judgment is the final determination of the rights of the parties in action. Judgment.

SEC. 423. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; it may determine the ultimate rights May be given.

of the parties on either side, as between themselves, and it may grant to the defendant any affirmative relief to which he may be entitled. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment may be proper. The court may also dismiss the petition with costs, in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or to proceed in the cause against the defendant or defendants served.

Action may be
dismissed.

SEC. 424. An action may be dismissed without prejudice to a future action.

First, By the plaintiff, before the final submission of the case to the jury, or to the court, where the trial is by the court.

Second, By the court, where the plaintiff fails to appear on the trial.

Third, By the court, for want of necessary parties.

Fourth, By the court, on application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence.

Fifth, By the court, for disobedience by the plaintiff of an order concerning the proceedings in the action. In all other cases, upon the trial of the action, the decision must be on the merits.

Defendant
shall have the
right.

SEC. 425. In any case where a set-off or counter claim has been presented, the defendant shall have the right of proceeding to the trial of his claim, although the plaintiff may have dismissed the action or failed to appear.

Personal judg-
ment rendered.

SEC. 426. In actions to enforce a mortgage or other lien or charge, a personal judgment shall be rendered for the amount due, with interest, and for the sale of the property charged, and the application of the proceeds; or such application may be reserved for further order of the court. When the same mortgage embraces separate tracts of land, situated in two or more counties, the sheriff of each county shall make sale of the lands situated in the county of which he is

sheriff. No real estate within this territory shall be sold for the payment of any money, in security for which it may have been pledged, except in pursuance of a judgment of a court of competent jurisdiction, ordering such sale.

SEC. 427. When a judgment shall be rendered for a ^{Executed by} sheriff. conveyance, release or acquittance, in any court of the territory, and the party against whom the judgment shall be rendered, does not comply therewith by the time appointed, such judgment shall have the same operation and effect, and be as available as if the conveyance, release or acquittance had been executed conformably to such judgment; or the court may order such conveyance, release or acquittal to be executed in the first instance by the sheriff, and such conveyance release or acquittance so executed, shall have the same effect as if executed by the party against whom the judgement was rendered. This action shall apply to decrees rendered or to be rendered in suits now pending.

SEC. 428. If the taking of an account, or the proof ^{Court may} of a fact, or the assessment of damages, be necessary to enable the court to pronounce judgment upon a failure to answer, or after the decision of an issue of law, the court may, with the assent of the party not in default, take the account, hear the proof, or assess the damages, or may, with the like assent, refer the same to a referee, master or commissioner, or may direct the same to be ascertained or assessed by a jury. If a jury be ordered, it shall be on or after the day on which the action is set for trial.

Judgment by Confession.

SEC. 429. Any person indebted, or against whom a ^{Conf. judgment} cause of action exists, may personally appear, in a court of competent jurisdiction, and with the assent of the creditor, or person having such cause of action, confess judgment therefor, whereupon judgment shall be entered accordingly.

SEC. 430. Judgment may be entered upon confession ^{Judgment entered.} by an attorney, authorized for that purpose by a warrant of attorney, acknowledged or proved as conveyance of land,

without any previous process or proceeding; and judgment so entered shall be a lien from the date of entry.

Stated in writing.

SEC. 431. The debt or cause of action shall be briefly stated in the judgment, or in writing, to be filed as pleadings in other actions.

Affidavit filed.

SEC. 432. Before any judgment shall be entered by confession, an affidavit of the defendant must be filed, stating concisely the facts on which the indebtedness are, and that the amount of such indebtedness is justly due and owing by the defendant to the plaintiff.

Operate as release.

SEC. 433. Such judgment shall authorize the same proceedings for its enforcement as judgments rendered in action regularly brought and prosecuted; and the confessions shall operate as a release of errors.

Warrant filed.

SEC. 434. Every attorney who shall confess judgment in any case, shall at the time of making such confession, produce the warrant of attorney for making the same, to the court before which he makes the confession, and the original or copy of the warrant shall be filed with the clerk of the court in which the judgment shall be entered.

Attorney must sign

SEC. 435. If any person be in custody in a civil action, at the suit of another, no warrant of attorney executed by the person in custody, to confess judgment in favor of the person at whose suit he is in custody, shall be of any force, unless some attorney expressly named by the person in custody be present, and sign the warrant of attorney as a witness.

Manner of Giving and Entering Judgment.

Trial by jury.

SEC. 436. When a trial by jury has been had, judgment must be rendered by the court in conformity to the verdict, unless it is special, or the court order the case to be reserved for future argument or consideration.

Where verdict is special.

SEC. 437. Where the verdict is special, or where there has been a special finding on particular questions of fact, or where the court has ordered the case to be reserved, it shall order what judgment shall be entered.

SEC. 438. Where, upon the statements in the plead-

ings, one party is entitled by law to judgment in his favor, judgment shall be so rendered by the court, though a verdict has been found against such party. Where one party entitled to judgment.

SEC. 439. If a counter claim or set-off established at the trial, exceeds the plaintiff's claim so established, judgment for the defendant must be given for the excess; or if it appear that the defendant is entitled to any affirmative relief, judgment shall be given therefor. Judgments given for excess.

SEC. 440. It shall not be necessary to reserve, in a judgement or order, the right of an infant to show cause against it after his attaining full age; but in any case in which, but for this section, such reservation would have been proper, the infant, within one year after arriving at the age of twenty-one years, may show cause against such order or judgment. Infant may show cause against judgment.

SEC. 441. All judgments and orders must be entered on the journal of the court, and specify clearly the relief granted or order made in the action. Must be entered on Journal.

SEC. 442. The clerk shall make a complete record after final judgment, of all cases involving the title to real property, or where the defendant has been constructively served, and has not appeared to the action, either in person or by attorney, and in no other case, unless requested so to do in open court, at the time of entering the final judgment in the case. Clerk shall make record.

SEC. 443. He shall make up such record in each cause, in the vacation next after the term after which the same was determined, and the presiding judge of such court shall, at its next term thereafter, subscribe the same. In vacation next after term.

SEC. 444. The records shall be made up from the petition, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court; but if the items of an account or the copies of a paper attached to the pleadings be voluminous, the court may order the record to be made by abbreviating the same, or inserting a permanent description thereof, or by omitting them entirely. Evidence must not be recorded. Made up from position.

Acts not regularly recorded.

SEC. 445. When the judicial acts or other proceedings of any court have not been regularly brought up and recorded by the clerk thereof, such court shall cause the same to be made up and recorded within such time as it may direct. When they are made up and on examination, found to be correct, the presiding judge of such court shall subscribe the same.

Judgments, where liens.

SEC. 446. Judgments of courts of record of this territory, and of courts of the United States, rendered within this territory, shall be liens on real estate of the debtor, within the county in which the judgment is rendered, from the first day of the term at which the judgment is rendered; but judgments by confession, and judgments rendered at the same term during which the action was commenced, shall bind such lands only from the day on which such judgment was rendered. An attested copy of the journal entry of any judgment, together with a statement of the costs taxed against the debtor in the case, may be filed in the office of the clerk of the district court of any county, and such judgment shall be a lien on the real estate of the debtor, within that county, from the date of filing such copy. The clerk shall enter such judgment on the appearance and judgment dockets in the same manner as if rendered in the court of which he is clerk. Executions shall only be issued from the court in which the judgment is rendered.

Conveyance by Commissioners.

Real property, how conveyed.

SEC. 447. Real property may be conveyed by master commissioners as hereinafter provided:

First, When by an order or judgment in an action or proceeding, a party is ordered to convey such property to another, and he shall neglect or refuse to comply with such order or judgment.

Second, When specific real property is required to be sold under an order or judgment of the court.

Sheriff may act

SEC. 448. A sheriff may act as master commissioner under the second subdivision of the preceding section. Sales made under the same shall conform in all respects to the laws regulating sales of land upon execution.

SEC. 449. The deed of a master commissioner shall contain the like recital, and shall be executed, acknowledged and recorded, as the deed of a sheriff, of real property sold under execution.

The deed of a—

TITLE XX.

Causes of Action which Survive, and Abatement of Actions.

SEC. 450. In addition to the causes of action which survive at common law, causes of action for mesne profits, or for an injury to the person or to real or personal estate, or for any deceit or fraud, shall also survive, and the action may be brought, notwithstanding the death of the person entitled or liable to the same.

Cause of action

SEC. 451. No action pending in any court, shall abate by the death of either or both the parties thereto, except an action for libel, slander, malicious prosecution for a nuisance, or against a justice of the peace for misconduct in office, which shall abate by the death of the defendant.

No action pending shall abate.

TITLE XXI.

Revivor. Revivor of Actions.

SEC. 452. Where there are several plaintiffs or defendants in an action, and one of them dies, or his powers as personal representative cease, if the right of action survive to or against the remaining parties, the action may proceed, the death of the party or the cessation of his powers being stated on the record.

Where there are several plaintiffs, &c.

SEC. 453. Where one of several plaintiffs or defendants dies, or his powers as a personal representative cease, if the cause of action do not admit of supervisorship, and the court is of opinion that the merits of the controversy can be properly determined and the principles applicable to the case fully settled, it may proceed to try the same as between the remaining parties; but the judgment shall not prejudice any who were not parties at the time of trial.

In case of death

SEC. 454. When one of the parties to an action dies, or his powers as a personal representative cease before the judg-

When action may be revived.

ment, if the right of action survive in favor of or against his representatives or successor, the action may be revived and proceed in their names.

If made in term.

SEC. 455. The revivor shall be, by a conditional order of the court, if made in term, or by a judge thereof, if in vacation, that the action be revived, in the names of the representatives or successor of the party who died, or whose powers ceased, and proceed in favor of or against them.

Order made on motion.

SEC. 456. The order may be made on motion of the adverse party, or of the representatives or successor of the party who died, or whose powers ceased, suggesting his death or the cessation of his powers, which with the names and capacities of his representatives or successor, shall be stated in the order.

If order made by consent.

SEC. 457. If the order is made by consent of the parties, the action shall forthwith stand revived; and if not made by consent, the order shall be served in the same manner and returned within the same time as a summons, upon the party adverse to the one making the motion; and if sufficient cause be not shown against the revivor, the action shall stand revived,

When non-residents.

SEC. 458. When the plaintiff shall make an affidavit, that the representatives of the defendant, or any of them in whose name the action may be ordered to be revived, are non-residents of the territory, or have left the same to avoid the service of the order, or so conceal themselves that the order cannot be served upon them, or that the names and residence of the heir or devisees of the person against whom the action may be ordered to be revived, or some of them, are unknown to the affiant, a notice may be published for six consecutive weeks, as provided by section seventy-eight, notifying them to appear on a day therein named, not less than ten days after the publication is complete, and show cause why the action should not be revived against them; and if sufficient cause be not shown to the contrary, the action shall stand revived.

In whose name

SEC. 459. Upon the death of a plaintiff in an action, it may be revived in the names of his representatives, to whom

his right has passed. Where his right has passed to his personal representatives, the revivor shall be in his name; where it has passed to his heirs or devisees, who could support the action if brought anew, the revivor may be in their names.

SEC. 460. Upon the death of a defendant in an action, wherein the right or any part thereof survives, against When it survives against them. any of his personal representatives, the revivor shall be against them; or it may, also, be against the heirs or devisees of the defendant, or both, when the right of action or any part thereof survives against them.

SEC. 461. Upon the death of a defendant in an action for the recovery of real property only, or which concerns Revived against his heirs. only his rights or claims to such property, the action may be revived against his heirs or devisees, or both, and an order therefor may be forthwith made in the manner directed in the preceding sections of this title.

SEC. 462. An order to revive an action against the representatives or successor of a defendant, shall not be made without the consent of such representatives or successor, unless in one year from the time it could have been first made. Not made without consent

SEC. 463. An order to revive an action in the names of the representatives or successor of a plaintiff, may be made forthwith, but shall not be made without the consent of the defendant, after the expiration of one year from the time the order might have been first made; but, where the defendant shall also have died or his powers have ceased in the meantime, the order of revivor, on both sides, may be made in the period limited in the last section. When made in certain cases.

SEC. 464. When it appears to the court, by affidavit, that either party to an action has been dead, or where a party sues or is sued as a personal representative, that his powers have ceased for a period so long that the action cannot be revived in the names of his representatives or successor, without the consent of both parties, it shall order the action to be stricken from the docket. When stricken from docket.

SEC 465. At any term of the court succeeding the

When in, ten
days.

death of the plaintiff, while the action remains on the docket, the defendant having given to the plaintiff's proper representatives, in whose names the action might be revived, ten days notice of the application therefor, may have an order to strike the action from the docket, and for costs against the estate of the plaintiff, unless the action is forthwith revived.

Trial not post-
poned.

SEC. 466. When, by the provisions of the preceding sections, an action stands revived, the trial thereof shall not be postponed by reason of the revivor, if the action would have stood for trial at the term the revivor is complete, had no death or cessation of powers taken place.

Revivor and new parties to Judgment.

When judg-
ment recovered.

SEC. 467. When a judgment is recovered against one or more persons jointly indebted upon contract, those who were not originally summoned may be made parties to the judgment by action.

In case both
parties die after.

SEC. 468. If either or both parties die after judgment and before satisfaction thereof, their representatives, real or personal or both, as the case may require, may be made parties to the same, in the same manner as is prescribed for reviving actions before judgment; and such judgment may be rendered and execution awarded as might or ought to be given or awarded against the representatives, real or personal or both, of such deceased party.

If judgment
dormant.

SEC. 469. If a judgment become dormant, it may be revived in the same manner as is prescribed for reviving actions before judgment.

TITLE XXII.

ARTICLE I.

Executions.

Executions.

SEC. 470. Executions shall be deemed process of the court, and shall be issued by the clerk and directed to the sheriff of the county. They may be directed to different counties at the same time.

Of four kinds.

SEC. 471. Executions are of four kinds.

First, Against the property of the judgment debtor.

Second, Against his person.

Third, For the delivery of the possession of real or personal property, with damages for withholding the same and costs.

Fourth, Executions in special cases.

Executions against the property of the Judgment Debtor.

SEC. 472. Lands, tenements, goods and chattels, not exempt by law, shall be liable to be taken on execution and sold as hereinafter provided. What liable on execution.

SEC. 473. All real estate, not bound by the lien of the judgment, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution. Real estate.

SEC. 474. On all judgments and decrees hereafter rendered in any of the district courts in this territory, there shall be stay of execution or order of sale, as the case may be, as hereinafter provided. Stay of execution, &c.

SEC. 475. The order of sale on all decrees for the sale of mortgaged premises, shall be stayed for the period of one year from and after the rendition of such decree, whenever the defendant shall desire such stay, and shall within twenty days after the rendition of such decree, file with the clerk of such court, a written request for the same: *Provided*, That if the defendant make no such request within said twenty days, the order of sale may issue immediately after the expiration thereof. On sale of mortgaged premises.
Provide.

SEC. 476. Execution on all judgments hereafter rendered in said courts, shall be stayed for the period of one year from and after the rendition thereof: *Provided*, The defendant shall, within twenty days, after the judgment is obtained, show to the satisfaction of such court or the judge thereof, that he or she is the owner of real estate in the county of sufficient value, over and above incumbrances, to pay such judgment. On judgments.
Provide.

SEC. 477. On other judgments or decrees of said courts, execution or orders of sale as the case may be, shall be stayed for the period of one year, whenever the defendant, On other judgments.

within twenty days after the rendition thereof, shall enter into a bond to the plaintiff with one or more sufficient sureties, residents of the county, to be approved by such court or the judge thereof, conditioned for the payment of the amount of such judgment or decree, together with the interests and costs that may accrue.

When judgment dormant.

SEC. 478. If execution shall not be sued out within five years from the date of any judgment that now is or may hereafter be rendered in any court of record in this territory, or if five years shall have intervened between the date of the last execution issued on such judgment and the time of suing out another writ of execution thereon, such judgment shall become dormant and shall cease to operate as a lien on the estate of the judgment debtor.

What indorsed on execution.

SEC. 479. The writ of execution against the property of the judgment debtor, issuing from any court of record in this territory, shall command the officer to whom it is directed, that of the goods and chattels of the debtor, he cause to be made the money specified in the writ, and for want of goods and chattels, he cause the same to be made of the lands and tenements of the debtor; and the exact amount of the debt, damages and costs, for which the judgment is entered, shall be indorsed on the execution.

When no preference.

SEC. 480. When two or more writs of execution against the same debtor shall be sued out, during the term in which judgment was rendered, or within ten days thereafter, and when two or more writs of execution against the same debtor shall be delivered to the officer on the same day, no preference shall be given to either of such writs; but if a sufficient sum of money be not made to satisfy all executions, the amount made shall be distributed to the several creditors in proportion to the amount of their respective demands. In all other cases the writ of execution first delivered to the officer shall be first satisfied. And it shall be the duty of the officer to indorse on every writ of execution the time when he received the same; but nothing herein contained shall be so construed as to effect any preferable lien which

Officer shall indorse.

one or more of the judgments on which execution issued, may have on the lands of the debtor.

SEC. 481. The officer to whom the writ of execution is delivered shall proceed immediately to levy the same upon the goods and chattels of the debtor; but if no goods and chattels can be found, the officer shall indorse on the writ of execution "no goods," and forthwith levy the writ of execution upon the lands and tenements of the debtor which may be liable to satisfy the judgment. Duty of officer.

SEC. 482. If the officer, by virtue of an execution issued from any court of record in this territory, shall levy the same on any goods and chattels claimed by any person other than the defendant, or be requested by the plaintiff to levy on any such goods and chattels, the officer may require the plaintiff to give him an undertaking, with good and sufficient securities, to pay all costs and damages that he may sustain by reason of the detention or sale of such property; and until such undertaking shall be given, the officer may refuse to proceed as against such property, Officer may require in certain cases.

SEC. 483. In all cases where a sheriff, coroner or other officer, shall by virtue of an execution, levy upon any goods and chattels which shall remain upon his hands unsold for want of bidders, for want of time to advertise and sell, or any other reasonable cause, the officer may, for his own security, take of the defendant an undertaking, with security in such sum as he may deem sufficient, to the effect that the said property shall be delivered to the officer holding an execution for the sale of the same, at the time and place appointed by said officer, either by notice given in writing to said defendant in execution, or by advertisement, published in a newspaper printed in the county, naming therein the day and place of sale. If the defendant shall fail to deliver the goods and chattels, at the time and place mentioned in the notice to him given, or to pay to the officer holding the execution, the full value of said goods and chattels, or the amount of said debt and costs, the undertaking, given as aforesaid, shall be considered as broken, and may be proceeded on as in other cases. When goods remain unsold.

Notice given
by advertisement

SEC. 484. The officer who levies upon goods and chattels, by virtue of an execution issued by a court of record, before he proceeds to sell the same, shall cause public notice to be given of the time and place of sale, for at least ten days before the day of sale. The notice shall be given by advertisement, published in some newspaper printed in the county, or, in case no newspaper be printed therein, by putting up advertisements in five public places in the county; two advertisements shall be put up in the precinct where the sale is to be held. And where goods and chattels levied upon cannot be sold for want of bidders, the officer making such return shall annex to the execution a true and perfect inventory of such goods and chattels; and the plaintiff in such execution may thereupon sue out another writ of execution, directing the sale of the property levied upon as aforesaid; but such goods and chattels shall not be sold unless the time and place of sale be advertised, as hereinbefore provided.

When to levy
on lands, tenements,
&c.

SEC. 485. When any writ shall issue, directing the sale of property previously taken in execution, the officer issuing said writ shall, at the request of the person entitled to the benefit thereof, his agent or attorney, add thereto a command to the officer to whom such writ shall be directed, that if the property remaining in his hands not sold, shall, in his opinion, be insufficient to satisfy the judgment, he shall levy the same upon the lands and tenements, goods and chattels, or either, as the law shall permit, being the property of the judgment debtor, sufficient to satisfy the debt.

Appraisers,
when called.

SEC. 486. If execution be levied upon the lands and tenements, the officer levying such execution shall call an inquest of three disinterested householders, who shall be resident within the county where the lands taken in execution are situate, and administer to them an oath, impartially to appraise the property so levied on, upon actual view; and such householders shall forthwith return to said officer, under their hands, an estimate of the real value of said property.

Not sold for
less than one-half

SEC. 487. The officer holding such appraisement shall forthwith deposit a copy thereof in the office of the clerk of

the court from which the writ issued, and shall immediately advertise and sell said real estate agreeably to the provisions of this title, but in no case shall he sell any such land for less than one-half the appraised value thereof.

SEC. 488. If, upon such return, as aforesaid, it appear, When one-half is sufficient. by the inquisition, that one-half of the appraised value of said lands and tenements, so levied upon, is sufficient to satisfy the execution with costs, the judgment on which such execution issued shall not operate as a lien on the residue of the debtor's estate, to the prejudice of any other judgment creditor; but no such property shall be sold for less than one-half of the value returned in the inquest; and nothing in this section contained shall, in any wise, extend to effect the sale of lands by the territory, but all lands, the property of individuals indebted to the territory for any debt or taxes, or in any other manner, shall be sold, without valuation, for the discharge of such debt or taxes, agreeably to the laws in such cases made and provided.

SEC. 489. In all cases where real estate may hereafter be levied upon, by virtue of an execution or order of sale, and shall have been appraised, and twice advertised and offered for sale, and shall remain unsold for want of bidders, Unsold for want of bidders. it shall be the duty of the officer to cause a new appraisal of such real estate to be made, and successive executions or orders of sale may issue at any time in vacation, after the return of the officer, "Not sold for want of bidders," at the request of the plaintiff or his attorney.

SEC. 490. If the property of any clerk, sheriff, coroner, Sold without valuation. or justice of the peace, constable, or any collector of territorial, county, town or township, tax, shall be levied on, for or on account of any moneys, that now are or may hereafter be by them collected or received in their official capacity, the property so levied on shall be sold without valuation.

SEC. 491. Lands and tenements, taken in execution, shall not be sold until the officer cause public notice of the time and place of sale, to be given at least thirty days before the day of sale, by advertisement in some newspaper printed in the county, or, in case no newspaper be printed in the Thirty days notice.

county, in some newspaper in general circulation therein, and by putting up an advertisement on the court house door, and in five other places in the county, two of which shall be in the precinct where such lands and tenements lie. All sales made without such advertisement shall be set aside on motion, by the court to which the execution is returnable.

When court is
entitled of legal-
ity.

SEC. 492. If the court, upon the return of any writ of execution, for the satisfaction of which any lands and tenements have been sold, shall, after having carefully examined the proceedings of the officer, be satisfied that the sale has, in all respects, been made in conformity to the provisions of this title, the court shall direct the clerk to make an entry on the journal, that the court is satisfied of the legality of such sale, and an order that the officer make to the purchaser a deed of such lands and tenements, and the officer, on making such sale, may retain the purchase money in his hands until the court shall have examined his proceedings as aforesaid, when he shall pay the same to the person entitled thereto, agreeably to the order of the court.

Officer shall
make deed.

SEC. 493. The sheriff or other officer, who, upon such writ or writs of execution, shall sell the said lands and tenements or any part thereof, shall make to the purchaser as good and sufficient deed of conveyance of the lands and tenements sold, as the person or persons against whom such writs of execution were issued could have made of the same, at or any time after they became liable to the judgment. The deed shall be sufficient evidence of the legality of such sale, and the proceedings therein, until the contrary be proved, and shall vest in the purchaser as good and as perfect an estate in the premises therein mentioned, as was vested in the party at, or after, the time when such lands and tenements became liable to the satisfaction of the judgment; and such deed of conveyance to be made by the sheriff or other officer, shall recite the execution or executions, or the substance thereof, and the names of the parties, the amount and date of rendition of each judgment, by virtue whereof the said lands and tenements were sold as aforesaid, and in case of assignment of certificate as provided in sections

five hundred and nineteen and five hundred and twenty, a recital of such assignment, and shall be executed, acknowledged and recorded as is or may be provided by law, to perfect the conveyance of real estate in other cases.

SEC. 494. The officer who levies upon goods and chattels, or lands and tenements, or who is charged with the duty of selling the same by virtue of any writ or execution, may refuse to publish a notice of the sale thereof, by advertisement in a newspaper, until the party for whose benefit such execution issued, his agent or attorney, shall advance to such officer so much money as will be sufficient to discharge the fees of the printer for publishing such notice.

When officer may refuse to publish.

SEC. 495. Before any officer shall be excused from giving the notification mentioned in the last section, he shall demand of the party for whose benefit the execution was issued, his agent or attorney, (provided either of them reside in the county,) the fees in said section specified.

Fees.

SEC. 496. All sales of lands or tenements under execution, unless otherwise ordered by the court, shall be held at the court house, if there be one in the county in which such lands and tenements are situated, and if there be no court house, then at the door of the house in which the district court was last held. No sheriff or other officer making the sale of property, either personal or real, or any appraiser of such property, shall, either directly or indirectly, purchase the same; and every purchase so made shall be considered fraudulent and void.

Sales held at court house.

SEC. 497. If lands and tenements levied on as aforesaid are not sold upon one execution, other executions may be issued to sell the lands so levied upon.

Other executions issued.

SEC. 498. In all cases where two or more executions shall be put into the hands of any sheriff or other officer, and it shall be necessary to levy on real estate to satisfy the same, and either of the judgment creditors in whose favor one or more of said executions is issued, shall require the sheriff or other officer, to make a separate levy, to satisfy his execution or executions, it shall be the duty of the sheriff, or other officer, to levy said executions, or so many thereof as

In case of two or more executions.

may be required, on separate parcels of real property of the judgment debtor or debtors, giving to the officer making the levy on behalf of the creditor, whose execution may, by the provisions of this title, be entitled to a preference, the choice of such part of the real property of the judgment debtor or debtors, as will be sufficient, at one-half of the appraised value, to satisfy the same. And in all cases where two or more executions, which are entitled to no preference over each other, are put into the hands of the same officer, it shall be the duty of the officer, when required, to levy the same on separate parcels of the real property of the judgment debtor or debtors, when, in the opinion of the appraisers, the same may be divided without material injury, and if the real property of said debtors will not be sufficient, at two-thirds of its appraised value, to satisfy all the executions, chargeable thereon, such part of the same shall be levied on to satisfy each execution as will be at the same proportion in value to the whole, as the amount of all the executions chargeable thereon, as near as may be, according to the appraised value of each separate parcel of said real property.

When officer's
term expires.

SEC. 499. If the term of service of the sheriff or other officer, who has made, or shall hereafter make sale of any lands and tenements, shall expire, or if the sheriff or other officer shall be absent, or be rendered unable, by death or otherwise, to make a deed of conveyance of the same, any succeeding sheriff or other officer, on receiving a certificate from the court from which the execution issued, for the sale of said lands and tenements, signed by the clerk, by order of said court, setting forth that sufficient proof has been made to the court that such sale was fairly and legally made, and, on tender of the purchase money, or if the same or any part thereof be paid, then, on proof of such payment and tender of the balance, if any, may execute to said purchaser or purchasers, or his or their legal representatives, a deed of conveyance of such lands and tenements so sold. Such deed shall be as good and valid in law, and have the same effect, as if the sheriff or other officer, who made the sale had executed the same.

SEC. 500. If, on any sale made as aforesaid, there shall be, in the hands of the sheriff, or other officer, more money than is sufficient to satisfy the writ or writs of execution, with interest and costs, the sheriff or other officer shall, on demand, pay the balance to the defendants in execution, or his legal representatives.

Where there is more money than is sufficient.

SEC. 501. If any judgment or judgments, in satisfaction of which any lands or tenements are sold, shall at any time thereafter, be reversed, such reversal shall not defeat or effect the title of the purchaser or purchasers; but in such case, restitution shall be made by the judgment creditor, of the moneys for which such lands or tenements were sold, with the lawful interest from the day of sale.

On reversal of judgment.

SEC. 502. No judgment heretofore rendered, or which hereafter may be rendered, on which execution shall not have been taken out and levied, before the expiration of one year next after its rendition, shall operate as a lien upon the estate of any debtor, to the prejudice of any other *bona fide* judgement creditor. But in all cases where judgment has been or may be rendered in the supreme court, and a special mandate awarded to the district court to carry the same into execution, the lien of the judgment creditor shall continue for one year after the first day of the next term of the district court to which such mandate may be directed. Nothing in this section contained shall be construed to defeat the lien of any judgment creditor who shall fail to take out execution and cause a levy to be made as herein provided, where such failure shall be occasioned by appeal, proceedings in error, injunction, or by a vacancy in the office of sheriff and coroner, or the inability of such officer, until one year after such disability shall be removed. In all cases where real estate has been or may hereafter be taken on execution and appraised, and twice advertised and offered for sale, and shall remain unsold for want of bidders, it shall be the duty of the court from which such execution issued, on motion of of the plaintiff, to set aside such appraisalment, and order a new one to be made, or to set aside such levy and

When judgment shall not operate as lien.

appraisement, and award a new execution to issue, as the case may require.

Returned in
sixty days.

SEC. 503. The sheriff or other officer, to whom any writ of execution shall be directed, shall return such writ to the court to which the same is returnable, within sixty days from the date thereof.

Duties in cer-
tain cases.

SEC. 504. In all cases where judgment is rendered in any court of record within this territory, upon any other instrument of writing, in which two or more persons are jointly and severally bound, and it shall be made to appear to the court by parol or other testimony, that one or more of said persons so bound signed the same as surety or bail for his or their co-defendant, it shall be the duty of the clerk of said court, in recording the judgment thereon, to certify which of the defendants is principal debtor, and which are sureties or bail. And the clerk of the court aforesaid shall issue execution on such judgment, commanding the sheriff or other officer to cause the money to be made of the goods and chattels, lands and tenements, of the principal debtor, but for want of sufficient property of the principal debtor to make the same, that he cause the same to be made of the goods and chattels, lands and tenements, of the surety or bail. In all cases the property both personal and real, of the principal debtor, within the jurisdiction of the court, shall be exhausted before any property of the surety or bail shall be taken into execution.

If officer refuse
to execute writ.

SEC. 505. If any sheriff or other officer shall refuse or neglect to execute any writ of execution to him directed, which has come to his hands; or shall neglect or refuse to sell any goods and chattels, lands and tenements; or shall neglect to call an inquest, and return a copy thereof forthwith to the clerk's office, or shall neglect to return any writ of execution to the proper court, on or before the return day thereof; or shall neglect to return a just and perfect inventory of all and singular, the goods and chattels by him taken in execution, unless the said sheriff or other officer, shall return that he has levied and made the amount of the debt, damages and costs; or shall refuse or neglect on

demand, to pay over to the plaintiff, his agent or attorney of record, all moneys by him collected or received, for the use of said party, at any time after collecting or receiving the same, except as provided in section four hundred and ninety-two; or shall neglect or refuse, on demand made by the defendant, his agent or attorney of record, to pay over all moneys by him received for any sale made, beyond what is sufficient to satisfy the writ or writs of execution, with interest and legal costs, such sheriff or other officer shall, on motion in court, and two days notice thereof, in writing, be amerced in the amount of said debt, damages and costs, with twenty per centum thereon, to and for the use of said plaintiff or defendant, as the case may be.

SEC. 506. If any clerk of a court shall neglect or refuse, on demand made by the person entitled thereto, his agent or attorney of record, to pay over all money by him received in his official capacity, for the use of such person, every such clerk may be amerced; and the proceedings against him and his sureties shall be the same as provided for in the foregoing section against sheriffs and their sureties.

If clerk of court refuse or neglect.

SEC. 507. When the cause of amercement is for refusing to pay over money collected as aforesaid, the said sheriff or other officer shall not be amerced in a greater sum than the amount so withheld, with twenty per centum thereon.

Amercement.

SEC. 508. When execution shall be issued in any county in this territory, and directed to the sheriff or coroner of another county, it shall be lawful for such sheriff or coroner, having the execution, after having discharged all the duties required of him by law, to inclose such execution, by mail, to the clerk of the court who issued the same. On proof being made by such sheriff or coroner, that the execution was mailed soon enough to have reached the office where it was issued, within the time prescribed by law, the sheriff or coroner shall not be liable for any amercement or penalty, if it do not reach the office in due time.

Execution sent to clerk of court

Liability.

SEC. 509. No sheriff shall forward by mail, any money made on such execution, unless he shall be specially

Money when forwarded.

Notice.

instructed to do it by the plaintiff, his agent or attorney of record. In all cases of a motion to amerce, a sheriff or other officer of any county, other than the one from which the execution issued, notice in writing shall be given to such officer, as hereinbefore required, by leaving it with him, or at his office, at least fifteen days before the first day of the term at which such motion shall be made, or by transmitting the notice by mail, at least sixty days prior to the first day of the term at which such motion shall be made. All amercements so procured, shall be entered on the record of the court, and shall have the same force and effect as a judgment.

Parties.

SEC. 510. Each and every surety of any sheriff or other officer, may be made a party to the judgment rendered as aforesaid, against the sheriff or other officer, by action, to be commenced and prosecuted as in other cases. But the goods and chattels, lands and tenements of any such surety shall not be liable to be taken on execution, when sufficient goods and chattels, lands and tenements of the sheriff or other officer against whom the execution may be issued, can be found to satisfy the same. Nothing herein contained shall prevent either party from proceeding against such sheriff or other officer, by attachment, at his election.

Sureties.

Permission to sue.

SEC. 511. In cases where a sheriff or other officer may be amerced, and shall not have collected the amount of the original judgment, he shall be permitted to sue out an execution, and collect the amount of said judgment in the name of the original plaintiff, for his own use.

Contribution.

SEC. 512. When property, liable to an execution against several persons, is sold thereon, and more than due proportion of the judgment is laid upon the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the security pays the amount, or any part thereof, either by sale of his property, or before sale, he may compel repayment from the principal; in such case, the person so paying

or contributing, is entitled to the benefit of the judgment, to enforce contribution or repayment, if within ten days after his payment, he file, with the clerk of the court where the judgment was rendered, notice of his payment and claim to contribution or repayment. Upon a filing of such notice, the clerk shall make an entry thereof in the margin of the docket.

SEC. 513. Executions may be issued thereon, to the sheriff, by the clerk of the court, in the same manner as if the judgment had been taken in court; and the sheriff shall execute and return the same, as other executions; and in case of sale of real estate, his proceedings shall be examined and approved by the court as in other cases.

Execution.

ARTICLE II.

Redemption of Real Estate.

SEC. 514. Whenever any lands or tenements shall be sold, by virtue of any execution, it shall be the duty of the sheriff or other officer, instead of executing a deed of the premises sold, to give to the purchaser or purchasers of said lands or tenements, a certificate in writing, describing the lands or tenements purchased, and the sum paid therefor, or if purchased by the plaintiff in the execution, the amount of his bid, and the time when the purchaser will be entitled to a deed for such lands or tenements, unless the same shall be redeemed, as is provided in this article, and such sheriff or other officer, shall, within ten days from such sale, file in the office of the recorder of the county, a duplicate of such certificate signed by him, and such certificate or a certified copy thereof, shall be taken and deemed evidence of the facts therein contained.

Certificate.

SEC. 515. It shall be lawful for any defendant, his heirs, executors, administrators or grantees, whose lands or tenements shall be sold by virtue of any execution within six months from such sale, to redeem such lands or tenements, by paying to the purchaser thereof, his executors, administrators or assigns, or the sheriff or other officer who

Redemption.

sold the same, for the benefit of such purchaser, the sum of money which may have been paid on the purchase thereof, or the amount given or bid, if purchased by the plaintiff in the execution, together with the interest thereon at the rate of twenty per cent. per annum from the time of such sale ; and on such sum being paid as aforesaid, the said sale and the certificate thereupon granted shall be null and void.

Judgment
creditor.

SEC. 516. After the expiration of six months, and at any time before the expiration of nine months from the sale of any lands or tenements under the provisions of preceding sections hereof, it shall be lawful for any judgment creditor to redeem the same in the manner following : Such judgment creditor shall sue out an execution upon his judgment and place the same in the hands of the proper officer to execute the same ; and thereupon the said officer shall indorse upon the back of said execution a levy upon the land or tenements which said judgment creditor may wish to redeem ; and said judgment creditor shall pay to said officer in whose hands he shall have placed his execution as aforesaid, the amount of money for which said premises shall have been sold, with twenty per cent. per annum interest thereon from the date of such sale for the use of the purchaser thereof, his executors, administrators or assigns, upon payment of which, said officer shall file in the recorder's office of the county in which said lands are situated, a certificate of the redemption thereof by said judgment creditor under such execution, and shall advertise and offer the same for sale under and by virtue of said execution, in the same manner as lands are required to be advertised and exposed to sale on execution in other cases.

Excess, how
applied.

SEC. 517. Any judgment creditor having so redeemed such lands, shall be considered as having bid at such sale the amount of said redemption money so paid by him, and interest thereon from the date of such redemption to the day of sale ; and if no bid greater than said amount shall be [offered, the lands shall be struck off and sold to such creditors, and no other redemption shall be] allowed ; but if another and higher bid shall be made therefor, and the said

lands sold for more than the amount of said redemption money and interest, as last aforesaid, the excess over and above the amount of the same shall be applied as a credit on the execution under which the redemption shall have been made, and a certificate of purchase shall be executed to the new purchaser in the manner hereinbefore prescribed for a deed of said land so sold, within sixty days from the date of such sale, unless the same shall be redeemed in the meantime in the manner herein prescribed by some other judgment creditor; and if such lands shall be redeemed from said purchaser, the same shall be done in the same manner and upon the same terms, and the officer shall proceed in the same mode to offer the said lands for sale as hereinbefore required in the case of the first redemption; and such lands may be successively redeemed within any period of sixty days, as long as there shall be a judgment creditor disposed to redeem the same on the terms and in the manner aforesaid; and after the lapse of any period of sixty days without redemption, it shall be the duty of the officer who last sold such lands on the execution under which the same shall have been last redeemed, or his successor in office, to execute a deed for the lands so sold, to the last purchaser, in like manner as other deeds for lands sold on execution are made.

SEC. 518. Any judgment creditor or creditors may redeem the whole or any part or portion of the lands or tenements previously sold upon execution; *Provided*, Such redemption shall be made in like distinct quantities or parcels in which the same were sold.

Proviso.

SEC. 519. No commission upon the amount of the redemption money paid in any case shall be allowed to the officer receiving the same, but the usual commission shall be allowed the officer selling said premises on the excess made over and above the amount of said redemption money and interest. The duplicate copy of the certificate of purchase required in the five hundred and fourteenth section hereof, shall be filed in the office of the register of deeds of the county in which the said lands so sold under execution are situated.

Commission.

Assignments.

SEC. 520. Any certificate which shall be given by any officer to any purchaser under the provisions of this article, shall be assignable, by indorsement thereon, under the hand of such purchaser or purchasers, his, her or their heirs, executors, administrators or assigns; and any person to whom the same shall be sold or assigned, shall be entitled to the same benefits therefrom, in every respect, that the person therein named would have been if the same had not been assigned; and in case the lands mentioned in such certificate shall not be redeemed, in pursuance of law, shall be entitled to a deed thereof.

Evidence.

SEC. 521. Any deed so executed shall be evidence that the provisions of the law in relation to the sale of lands upon execution were complied with, until the contrary shall be shown, and such deed shall be considered as conveying to the grantee therein named, all the title, estate and interest of the defendant or defendants in the execution therein named, in and to the lands thereby conveyed, of whatsoever nature the same may be, but which shall not be construed to contain any covenant upon the part of the officer executing the same.

*Redemption by
mortgagor.*

SEC. 522. In all cases where lands shall be sold under and by virtue of any decree of the court of equity, for the sale of mortgaged lands, it shall be lawful for the mortgagor of such lands, his heirs, executors or administrators to redeem the same in the manner prescribed by this article, for the redemption of lands sold by virtue of executions issued upon judgments at common law; and the judgment creditors may redeem lands sold under any such decree, in the same manner as is prescribed for the redemption of lands in like manner sold upon executions issued upon judgments at common law.

Duty of recorder.

SEC. 523. It shall be the duty of the recorder of the proper county to file and record the certificates mentioned in the foregoing sections in a book to be kept for that purpose, for which he shall be entitled to the same fees as for recording other papers, to be paid by the plaintiff in such execution, and be taxed and collected by the sheriff as other costs.

SEC. 524. Such certificate may be in substance as follows :

TERRITORY OF WYOMING, }
 _____ County, } ss.

I do hereby certify, that by virtue of a certain writ of _____ to me directed from the district court of _____ county, in favor of _____, against _____.
 Dated _____ day of _____ 18____, I did on this _____ day of _____ 18____, levy upon the following real estate, (describe it.)

A. B. sheriff, (or coroner) of _____ county.

SEC. 525. In all cases of redemption of lands from sale had under any attachment, judgment or decree, or proceeding thereunder, it shall be the duty of the purchaser, sheriff, master in chancery, or other officer or persons from whom said redemption takes place, to make out an instrument in writing under his hand and seal evidencing said redemption, which shall be recorded in the register of deeds office of the proper county in manner as other writings effecting the title to real estate are filed and recorded ; and which recording shall be paid for by the party redeeming.

Instrument in writing.

ARTICLE III.

Proceedings in aid of Execution.

SEC. 526. When a judgment debtor has not personal or real property, subject to levy on execution, sufficient to satisfy the judgment, any equitable interest which he may have in real estate as mortgagor, mortgagee, or otherwise, or any interest he may have in any banking, turnpike, bridge or other joint stock company, or any interest he may have in any money, contracts, claims or choses in action, due or to become due to him, or in any judgment or decree, or any money, goods or effects which he may have in the possession of any person, body politic or corporate, shall be subject to the payment or such judgment by action or as this article prescribe.

Equitable interest.

Non-resident.

SEC. 527. When an execution against the property of a judgment debtor, or one of several debtors in the same judgment, is issued to the sheriff of a county where he resides, or, if he do not reside in the territory, to the sheriff of the county where the judgment was rendered, or a transcript of a justice's judgment has been filed, is returned unsatisfied in whole or in part, the judgment creditor is entitled to an order from a probate judge or judge of the district court, of the county to which the execution was issued, requiring such debtor to appear and answer concerning his property, before such judge, or a referee appointed by such judge, at a time and place specified in such order, within the county to which the execution was issued.

Refusal to apply property.

SEC. 528. After the issuing of an execution against property, and upon proof by the affidavit of the judgment creditor or otherwise, to the satisfaction of a probate judge or a judge of the district court, of the county in which the order may be served, that the judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by order, require the judgment debtor to appear at a time or place in said county, to answer concerning the same; and such proceedings may thereupon be had, for the application of the property of the judgment debtor towards the satisfaction of the judgment, as are prescribed in this article.

Arrest.

SEC. 529. Instead of the order requiring the attendance of the judgment debtor, as provided in the last two sections, the judge may, upon proof to his satisfaction, by affidavit of the party or otherwise, that there is danger of the debtor leaving the territory or concealing himself, to avoid the examination herein mentioned, issue a warrant requiring the sheriff to arrest him and bring him before such judge within the county in which the debtor may be arrested. Such a warrant can be issued only by a judge of probate, or judge of the district court of the county in which such debtor resides or may be arrested. Upon being brought before the judge, he shall be examined on oath, and other witnesses may

be examined on either side; and if, on such examination, it appears that there is danger of the debtor leaving the territory, and that he has property which he unjustly refuses to apply to such judgment, he may be ordered to enter into an undertaking in such sum as the judge may prescribe, with one or more sureties, that he will, from time to time, attend for examination before the judge or referee, as shall be directed. In default of entering into such undertaking, he may be committed to the jail of the county, by warrant of the judge, as for a contempt.

SEC. 530. No person shall, on examination, pursuant to this article, be excused from answering any question on the ground that his examination will tend to convict him of fraud, but his answer shall not be used as evidence against him, in a prosecution for such fraud. Fraud.

SEC. 531. After the issuing of execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid, or directed to be credited by the judgment creditor on the execution. Sheriff's receipt

SEC. 532. After the issuing or return of an execution against property of a judgment debtor, or any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place within the county in which such person or corporation may be served with the order to answer, and answer concerning the same. The judge may, also, in his discretion, require notice of such proceeding to be given to any party in the action, in such manner as may seem to him proper. Order to answer.

SEC. 533. Witnesses may be required, upon the order of the judge, or by a subpoena issued by the clerk of the district court, to appear and testify upon any proceedings. Witnesses.

under this article, in the same manner as upon the trial of an issue.

Referee.

SEC. 534. The party or witness may be required to attend before the judge or before a referee, appointed by the court or judge. If before a referee, the examination must be taken by the referee, and certified by the judge. All examinations, and answers, before a judge or a referee, under this article, must be on oath, but when a corporation answers, the answer must be on oath of an officer thereof.

Satisfaction of judgment.

SEC. 535. The judge may order the property of the judgment debtor, not exempt by law, in the hands either of himself or any other person or corporation, or due to the judgment debtor, to be applied towards the satisfaction of the judgment, but the earnings of the debtor for his personal services, at any time within three months next preceding the order, cannot be so applied, when it is made to appear by the debtor's affidavit or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

Receiver.

SEC. 536. The judge may, also, by order, appoint the sheriff of the proper county, or other suitable person, a receiver of the property of the judgment debtor, in the same manner and with like authority as if the appointment was made by the court. The judge may, also, by order, forbid a transfer or other disposition of the property of the judgment debtor, not exempt by law, and any interference therewith.

Equitable interest.

SEC. 537. If it shall appear that the judgment debtor has any equitable interest in real estate in the county in which proceedings are had, as mortgagor or mortgagee, or otherwise, and the interest of said debtor can be ascertained, as between himself and the person or persons holding the legal estate, or the person or persons having a lien on, or interest in the same, without controversy as to the interest of such person or persons holding such legal estate or interest therein, or lien on the same, the receiver may be ordered to sell and convey such real estate, or the debtors interest therein. Such sale shall be conducted, in all respects, in the same manner as is provided by this code for the sale of

real estate upon execution, and the proceedings of sale shall, before the execution of the deed, be approved by the court in which the judgment was rendered, or the transcript has been filed as aforesaid, as in cases of sale upon execution.

SEC. 538. If the sheriff shall be appointed receiver, he and his sureties shall be liable, on his official bond, for the faithful discharge of his duties as receiver, if any other person shall be appointed receiver he shall give a written undertaking in such sum as shall be prescribed by the judge, with one or more sureties, to the effect that he will faithfully discharge the duties of receiver, and he shall also take an oath to the same effect before acting as such receiver. The undertaking mentioned in this section, shall be to the territory of Wyoming, and actions may be prosecuted for a breach thereof, by any person interested, in the same manner as upon a sheriff's official bond. Undertaking.

SEC. 539. The judge or referee, acting under the provisions of this article, shall have power to continue his proceedings, from time to time, until they shall be completed. Continuance.

SEC. 540. The judge may in his discretion, order a reference to a referee, agreed upon or appointed by him, to report the evidence of the facts. Report.

SEC. 541. If any person, party or witness, disobey an order of the judge or referee, duly served, such person, party or witness, may be punished by the judge as for a contempt. Contempt.

SEC. 542. The orders to judgment debtors and witnesses, provided for in this chapter, shall be in writing and signed by the judge making the same, and shall be served as a summons in other cases. The judge shall reduce all his orders to writing, which, together with a minute of his proceedings, signed by himself, shall be filed with the clerk of the court of the county in which the judgment is rendered, or the transcript of the justice filed, and the clerk shall enter on his execution docket the time of filing the same. Orders in writing.

SEC. 543. The judge shall allow to clerks, sheriffs, referees, receivers and witnesses, such compensation as is allowed for like services in other cases, to be taxed as costs Compensation.

in the case, and shall enforce by order the collection thereof from such party or parties as ought to pay the same.

ARTICLE IV.

Executions Against the Person.

Commitment.

SEC. 544. An execution against the person of the judgment debtor shall require the officer to arrest such debtor, and commit him to the jail of the county until he pay the judgment or be discharged according to law.

Execution
against person
when issued.

SEC. 545. An execution against the person of the debtor may be issued upon any judgment for the payment of money :

First, When the judgment debtor has removed or begun to remove any of his property out of the jurisdiction of the court, with intent to prevent the collection of the money due on the judgment.

Second, When he has property, rights in action, evidences of debt or some interest or stock in some corporation or company which he fraudulently conceals with the like intent.

Third, When he has assigned or disposed of all or any part of his property, or rights in action, or has converted the same into money with intent to defraud his creditors, or with the intent to prevent such property from being taken in execution.

Fourth, When he fraudulently contracted the debt or incurred the obligation upon which the judgment was rendered.

Fifth, When he was arrested on an order before judgment and has not been discharged as an insolvent debtor, or the order has not been set aside as improperly made.

Affidavits.

SEC. 546. An execution against the person of the debtor, except as prescribed in the next succeeding section, can be issued only when the same is allowed by the supreme court, the district court or probate court, or any judge of either upon being satisfied by the affidavit of the judgment creditor or his attorney, and such other evidence as may be presented, of the existence of one or more of the particulars mentioned in the preceding section.

SEC. 547. In all cases in which the judgment debtor was arrested before judgment, and has not been released from imprisonment by an application for relief, as an insolvent debtor, and where the order for such arrest has not been adjudged improper, an execution against the person of such judgment debtor may issue of course.

Insolvent debtor.

SEC. 548. Any person taken in execution as aforesaid, shall be discharged by delivering or setting off to the officers serving the same, if issued from a court of record, real or personal property, sufficient to satisfy the judgment and costs, for which the writ is issued.

Discharge.

SEC. 549. The death of a person, under arrest in an action, does not satisfy the judgment; but an execution may issue thereon as if no arrest had been made.

Death.

SEC. 550. If a person imprisoned under an order of arrest, made before judgment, is not charged in execution, within ten days after judgment, he shall be discharged from such imprisonment.

Limitation.]

SEC. 551. In cases of commitment under this article, or upon arrest before or after judgment in civil cases, the person imprisoned, in case of his inability to perform the act or to endure the imprisonment, may be discharged from imprisonment by the court or judge committing him, or the court or judge thereof, in which the judgment was or might be rendered, on such terms as may be just.

Inability.

Executions for the delivery of real and personal Property.

SEC. 552. If the execution be for the delivery of the possession of real or personal property, it shall require the officer to deliver the same, particularly describing the property, to the party entitled thereto, and may, at the same time, require the officer to satisfy any costs or damages, recovered in the same judgment out of the goods and chattels of the party against whom it was rendered, and for the want of such goods and chattels, then out of the lands and tenements, and in this respect, it shall be deemed an execution against the property.

Satisfaction.

SEC. 553. When the judgment is not for the recovery

Copy of rule. of money or real property, the same may be enforced by attachment, by the court rendering judgment, upon motion made, or by a rule of the court upon the defendant; but, in either case, notice of the motion or a service of a copy of the rule shall be made on the defendant, a reasonable time before the order of attachment is made.

Judgment before Justices of the Peace.

Transcript.

SEC. 554. In all cases in which a judgment shall be rendered by a justice of the peace, the party in whose favor the judgment shall be rendered, may file a transcript of such judgment, in the office of the clerk of the district court of the county in which the judgment was rendered, and thereupon, the clerk shall, on the day on which the same shall be filed, enter the case on the execution docket, together with the amount of the judgment and time of filing the transcript.

Lien.

SEC. 555. Such judgment, if the transcript shall be filed in term time, shall have a lien on the real estate of the judgment debtor, from the day of filing; if filed in vacation, shall have a like lien from the first day of the next term of the court, in the same manner and to the same extent as if the judgment had been rendered in the district court.

Execution.

SEC. 556. Execution may be issued thereon, to the sheriff, by the clerk of the court, in the same manner as if the judgment had been taken in court, and the sheriff shall execute and return the same as other executions, and in case of sale of real estate, his proceedings shall be examined and approved by the court as in other cases.

Certificate.

SEC. 557. The justice of the peace, shall certify on the transcript the amount, if any, paid on such judgment. The costs of the transcript, and filing of the same, and the entry of the case on the execution docket, shall be paid by the party filing the same, and not taxed to the other party.

TITLE XXIII.

Miscellaneous Provisions.—Offer to Compromise.

SEC. 558. The defendant, in an action for the recovery

of money only, may, at any time before the trial, serve upon the plaintiff or his attorney, an offer in writing, to allow judgment to be taken against him for the sum specified therein. If the plaintiff accept the offer and give notice thereof to the defendant or his attorney, within five days after the offer was served, the offer and an affidavit that the notice of acceptance was delivered in the time limited, may be filed by the plaintiff, or the defendant may file the acceptance with a copy of the offer, verified by affidavit; and, in either case, the offer and acceptance shall be noted in the journal, and judgment shall be rendered accordingly. If the notice of acceptance be not given in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence, or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, he shall pay the defendant's costs from the time of the offer. The making of an offer pursuant to the provisions contained in this section, shall not be a cause for a continuance of an action or a postponement of the trial.

Compromise.

Submitting a Controversy.

SEC. 559. Parties to a question, which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court, which would have jurisdiction if an action had been brought. But it must appear by affidavit, that the controversy is real, and the proceedings in good faith to determine the rights of the parties. The court shall thereupon hear and determine the case, and render judgment as if an action were pending.

Submission.

SEC. 560. The case, the submission and the judgment shall constitute the record.

Record.

SEC. 561. The judgment shall be with costs, may be enforced, and shall be subject to reversal, in the same manner as if it had been rendered in an action, unless otherwise provided in the submission.

Reversal.

Offer to Confess Judgment.

SEC. 562. After an action for the recovery of money

Confession.

is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action. Whereupon, if the plaintiff, being present, refuse to accept such confession of judgment in full of his demands against the defendant in the action, or, having had such notice that the offer would be made, of its amount, and of the time of making it, as the court shall deem reasonable, fail to attend, and on the trial do not recover more than was so offered to be confessed, such plaintiff shall pay all the costs of the defendant incurred after the offer. The offer shall not be deemed to be an admission of the cause of action, or the amount to which the plaintiff is entitled, nor be given in evidence upon the trial.

Offer to confess.

SEC. 553. Before an action for the recovery of money is brought against any person, he may go into the court of the county of his residence, or of that in which the person having the cause of action resides, which would have jurisdiction of the action, and offer to confess judgment, in favor of such person, for a specified sum, on such cause of action. Whereupon, if such person, having had such notice that the offer would be made, of its own amount, and of the time and place of making it, as the court shall deem reasonable, do not attend to accept the confession, or attending, refuse to accept it, and should afterwards commence an action upon such cause, and not recover more than the amount so offered to be confessed, he shall pay all the costs of the action, and on the trial thereof, the offer shall not be deemed to be an admission of the cause of action, or amount to which the plaintiff is entitled, nor be given in evidence.

Costs.

Proceedings by Sureties.

Sureties.

SEC. 564. A surety may maintain an action against his principal, to compel him to discharge the debt or liability, for which the surety is bound, after the same has become due.

Action.

SEC. 565. A surety may maintain an action against his principal, to obtain indemnity against the debt or liability for which he is bound, before it is due, whenever any of the grounds exist, upon which, by the provisions of

this code, an order may be made for arrest and bail, or for an attachment.

SEC. 566. In such action, the surety may obtain any of the provisional remedies mentioned in title eight, upon the ground and in the manner therein described. Provisional remedies.

Motions and orders.

SEC. 567. A motion is an application for an order, addressed to the court, or a judge in vacation, by any party to a suit or proceeding, or one interested therein. Definition of motion.

SEC. 568. Several objects may be included in the same motion, if they all grow out of, or are connected with the action or proceeding in which it is made. What to include.

SEC. 569. Where notice of a motion is required, it must be in writing, and shall state the names of the parties to the action or proceeding in which it is made, the name of the court or judge before whom it is to be made, the place where, and the day on which it will be heard, the nature and terms of the order or orders to be applied for, and if affidavits are to be used on the hearing, the notice shall state that fact, and it shall be served a reasonable time before the hearing. Notice in writing.

SEC. 570. Notices of motions, mentioned in this chapter, may be served by a sheriff, coroner or constable, or by any disinterested person, and the return of any such officer, or affidavit of any such person, shall be proof of service; the service shall be on the party, or his attorney of record if the said party or his attorney be resident within the county in which the motion is made, and in case there is more than one party adverse to such motion, service shall be made upon each party or his attorney. By whom served.

SEC. 571. The service of a notice shall be made as is required by law for the service of a summons, and when served by an officer, he shall be entitled to like fees. The service shall be on the party or his attorney of record, if the said party or his attorney be resident within the county in which the motion is made, and in case there is more than

one party adverse to such motion, service shall be made upon each party or his attorney.

Without notice.

SEC. 572. Motions to strike pleadings and papers from the files, may be made with or without notice, as the court or judge shall direct.

Definition of order.

SEC. 573. Every direction of a judge or court made, or entered in writing, and not included in a judgment, is an order.

How entered.

SEC. 574. Orders made out of court shall be forthwith entered by the clerk in the journal of the court, in the same manner as orders made in term.

TITLE XXIV.

Error in civil cases.

Error.

SEC. 575. A judgment rendered, or final order made, by a probate court, justice of the peace, or any other tribunal, board or officer exercising judicial functions, and inferior in jurisdiction to the district court, may be reversed, vacated or modified by the district court.

Final order.

SEC. 576. An order effecting a substantial right in an action, when such order in effect determines the action and prevents a judgment, and an order effecting a substantial right made in a special proceeding, or upon a summary application or an action after judgment, is a final order which may be vacated, modified or reversed, as provided in this title. A judgment rendered or final order made by the district court or a judge thereof, may be reversed, vacated or modified by the supreme court.

Errors of record.

SEC. 577. A judgment rendered or final order made by any court, board or tribunal, mentioned in the preceding sections, may be reversed, vacated or modified by the supreme court, for errors appearing on the record; but the petition in error, in such case, can be filed only by leave of the supreme court, or a judge thereof.

Petition in error.

SEC. 578. The proceedings to obtain such reversal, vacation or modification in the supreme court shall be by petition, to be entitled, "Petition in error," filed in the supreme court, setting forth the errors complained of, and

thereupon a summons shall issue and be served, or publication made, as in the commencement of an action. A service on the attorney of record in the original case shall be sufficient. The summons shall notify the adverse party that a petition in error has been filed in a certain case, naming it, and shall be made returnable on or before the first day of the term of the court, if issued in vacation; if issued in term time, it shall be returnable on a day therein named; if the last publication or service of the summons shall be made ten days before the end of the term, the case shall stand for hearing at the term.

Summons.

SEC. 579. The summons mentioned in the last section, shall, upon the written precept, of the plaintiff in error or his attorney, be issued by the clerk of the court in which the petition is filed, to the sheriff of any county in which the defendant in error or his attorney of record may be, and if the writ issue to a foreign county, the sheriff thereof may return the same by mail to the clerk, and shall be entitled to the same fees as if the same had been returnable to the district court of the county in which such officer resides. The defendant in error, or his attorney, may waive in writing the issuing or service of the summons.

How issued.

SEC. 580. The plaintiff in error shall file with his petition a transcript of the proceedings containing the final judgment or order sought to be reversed, vacated or modified.

Transcript.

SEC. 581. Judges of probate courts, justices of the peace, and other judicial tribunals having no clerk, and clerks of every court of record, shall, upon request and being paid the lawful fees therefor, furnish an authenticated transcript of the proceedings, containing the judgment or final order of said courts, to either of the parties to the same, or to any person interested in procuring such transcript.

Authenticated
&c.

SEC. 582. No proceeding to reverse, vacate or modify any judgment or final order rendered in the probate court, or district court, except as provided in the next section, and the fourth subdivision of this section, shall operate to stay execution, unless the clerk of the court in which the record

Stay of execution.

Undertaking. of said judgment or final order shall be, shall take a written undertaking, to be executed on the part of the plaintiff in error to the adverse party, with one or more sufficient sureties, as follows :

Double the amount of judgment. *First*, When the judgment or final order sought to be reversed, directs the payment of money, the written undertaking shall be in double the amount of the judgment or order, to the effect that the plaintiff in error will pay the condemnation money and costs, in case the judgment or final order shall be affirmed in whole or in part.

Affirmance. *Second*, When it directs the execution of a conveyance or other instrument, the undertaking shall be in such sum as may be prescribed by any court of record in this territory or any judge thereof, to the effect that the plaintiff in error will abide the judgement, if the same shall be affirmed, and pay the costs.

Costs. *Third*, When it directs the sale or delivery of possession of real property, the undertaking shall be in such sum as may be prescribed by any court of record of this territory, or any judge thereof, to the effect that during the possession of such property by the plaintiff in error, he will not commit or suffer to be committed any waste thereon, and if the judgment be affirmed he will pay the value of the use and occupation of the property from the date of the undertaking until the delivery of the possession, pursuant to the judgment, and all costs.

Documents. *Fourth*, When it directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which the judgment was rendered, to abide the judgment of the appellate court, or the undertaking shall be in such sum as may be prescribed as aforesaid, to abide the judgment and pay costs, if the same shall be affirmed.

Conveyance, &c. SEC. 583. Instead of the undertaking prescribed in the second subdivision of the last section, the conveyance or other instrument may be executed and deposited with the clerk of the court in which judgment was rendered or order made, to abide the judgment of the appellate court.

SEC. 584. Before the written undertaking herein

mentioned in section five hundred and eighty-two, shall operate to stay execution of the judgment or order, the execution of the undertaking and the sufficiency of the sureties, must be approved by the court in which the judgment was rendered or order made, or by the clerk thereof; and the clerk shall indorse said approval, signed by himself, upon the undertaking, and file the same in his office, for the defendant in error.

Approval of
sentence.

SEC. 585. In an action arising on contract, for the payment of money only, notwithstanding the execution of the undertaking in the last section mentioned to stay proceedings, if the defendant in error give adequate security to make restitution in case the judgment is reversed or modified, he may, upon leave obtained from the court below, or a judge thereof in vacation, proceed to enforce the judgment. Such security must be an undertaking executed to the plaintiff in error by at least two sufficient sureties, to the effect that if the judgment be reversed or modified, he will make full restitution to the plaintiff in error of the money by him received under the judgment.

Enforcement
of judgment.

SEC. 586. No proceeding for reversing, vacating or modifying judgments or final orders, shall be commenced unless, within three years after the rendition of the judgment or making the final order complained of; or in case the person entitled to such proceeding be an infant, a married woman, a person of unsound mind, or imprisoned, within three years as aforesaid, exclusive of the time of such disability. *Provided*, That no proceeding for reversing, vacating or modifying judgments or final orders made by justices of the peace shall be commenced unless within three months after the rendition or making of the judgment or final order complained of.

Limitation.

Proviso.

SEC. 587. No proceedings to reverse, vacate or modify any judgment rendered or final order made by a justice of the peace, shall operate as a stay of execution, unless the clerk of the district court shall take a written undertaking to the defendant, executed on the part of the plaintiff in error, by one or more sufficient sureties, to the effect that

Undertaking.

the plaintiff will pay all costs which have accrued or may accrue on such proceedings in error, together with the amount of any judgment that may be rendered against such plaintiff in error, either on the further trial of the case, after the judgment of the court below shall have been set aside or reversed, or upon and after the affirmance thereof in the district court. The person entitled to such proceedings shall have the same time for prosecuting the same, before he is barred, as is provided in the last section, unless the said judgment has been paid off or satisfied prior to the commencement of such proceedings.

Stay of proceedings.

SEC. 588. Execution of the judgment or final order of any judicial tribunal, other than those enumerated in this title, may be stayed on such terms as may be prescribed by the court or a judge thereof, in which the proceedings are pending.

Reversal by supreme court.

SEC. 589. When a judgment or final order shall be reversed, either in whole or in part, in the supreme court, the court reversing the same shall proceed to render such judgment as the court below should have rendered, or remand the cause to the court below for such judgment; and the court reversing such judgment or final order shall not issue execution in causes that are removed before them on error, on which they pronounced judgment as aforesaid, but shall send a special mandate to the court below as the case may require, to award execution thereupon; and such court to which such special mandate is sent, shall proceed in such cases in the same manner as if such judgment or final order had been rendered therein. And on motion, and good cause shown, it may suspend any execution made returnable before it by order of the supreme court, in the same manner as if such execution had been issued from its own court, but such power shall not extend further than to stay proceedings until the matter can be further heard by the supreme court.

Costs.

SEC. 590. When a judgment or final order is reversed, the plaintiff in error shall recover his costs, and when

reversed in part, and affirmed in part, costs shall be equally divided between the parties.

SEC. 591. When a judgment or final order shall be affirmed in the supreme court, the said court shall also render judgment against the plaintiff in error, for five per cent. upon the amount due from him to the defendant in error, unless the court shall enter upon its minutes, that there was reasonable ground for the proceeding in error. Five per cent.

SEC. 592. A mistake, neglect or omission of the clerk shall not be a ground of error, until the same has been presented and acted upon in the court in which the mistake, neglect or omission occurred. Mistake.

SEC. 593. Rendering judgment before the action stood for trial, according to the provisions of this code, shall be deemed a clerical error. Clerical error.

SEC. 594. Writs of error shall be allowed to reverse, vacate or modify judgments or final orders in civil cases. Reversal in civil cases.

SEC. 595. If the judgment of a justice of the peace, taken on error as herein provided, to the district court, be affirmed, it shall be the duty of such court to render judgment against the plaintiff in error, for costs of the suit, and to award execution therefor, and the court shall thereupon order his clerk to certify its decision in the premises, to the justice, that the judgment affirmed may be enforced, as if such proceedings in error had not been taken; or such court may award execution to carry into effect the judgment of such justice, in the same manner as if such judgment had been rendered in the district court. Certificate

SEC. 596. When the proceedings of a justice of the peace are taken on error to the district court, in manner aforesaid, and the judgment of such justice shall be reversed or set aside, the court shall render judgment of reversal, and for the costs that have accrued in obtaining such reversal in favor of the plaintiff in error, and award execution therefor; and the cause shall be retained by the court for trial and final judgment, as in cases of appeal. Judgment.

Proceedings to Reverse, Vacate or Modify Judgments and orders in the Courts in which they are rendered.

Modification
by district court.

SEC. 597. A district court shall have power to vacate or modify its own judgments or orders, after the term at which such judgment or order is made.

First, By granting a new trial of the cause, within the time and in the manner prescribed in section three hundred and fifteen.

Second, By a new trial granted in proceedings against defendants, constructively summoned, as provided in section seventy-six.

Third, For mistake, neglect or omission of the clerk, or irregularity in obtaining a judgment or order.

Fourth, For fraud practiced by the successful party in obtaining the judgment or order.

Fifth, For erroneous proceedings against an infant, married woman, or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings.

Sixth, For the death of one of the parties before the judgment in the action.

Seventh, For unavoidable casualty or misfortune preventing the party from prosecuting or defending.

Eighth, For errors in a judgment shown by an infant in twelve months after arriving at full age, as prescribed in section four hundred and forty.

Ninth, For taking judgments upon warrants of attorney, for more than was due to the plaintiff, when the defendant was not summoned or otherwise legally notified of the time and place of taking such judgment.

Petition.

SEC. 598. The proceedings to vacate or modify the judgment or order on the grounds mentioned in subdivisions four, five, six, seven, eight and nine of the last preceding section, shall be by petition, verified by affidavit, setting forth the judgment or order, the grounds to vacate or modify it, and the defense to the action, if the party applying was defendant. On such petition, a summons shall issue and be

served as in the commencement of an action; *Provided*,
Such summons shall not issue in any case in which there is
upon the minutes of the court, or among the files of the case,
a waiver of error by the party or his attorney, unless the
court or judge thereof, shall indorse upon the petition per-
mission to issue such summons.

Provide.

SEC. 599. The proceedings to correct mistakes or omis-
sions of the clerk, or irregularity in obtaining a judgment
or order, shall be by motion, upon reasonable notice to the
adverse party or his attorneys in the action. The motion to
vacate a judgment because of its rendition before the action
regularly stood for trial, can be made only in the first three
days of the succeeding term.

*Reasonable no-
tice.*

SEC. 600. The court may first try and decide upon the
grounds to vacate or modify a judgment or order before
trying or deciding upon the validity of the defense or cause
of action.

Decision.

SEC. 601. A judgment shall not be vacated on motion
or petition, until it is adjudged that there is a valid defense
to the action in which the judgment is rendered, or, if the
plaintiff seek its vacation, that there is a valid cause of
action; and where a judgment is modified, all liens and
securities obtained under it, shall be preserved to the
modified judgment.

Valid defense

SEC. 602. The party seeking to vacate or modify a
judgment or order, may obtain an injunction suspending
proceedings on the whole or a part thereof, which injunction
may be granted by the court or any judge thereof, upon its
being rendered probable, by affidavit or by exhibition of the
record, that the party is entitled to have such judgment or
order vacated or modified.

Injunction.

SEC. 603. When the judgment was rendered before the
action stood for trial, the suspension may be granted as
provided in the last section, although no valid defense to the
action is shown; and the court shall make such orders
concerning the executions to be issued on the judgment as
shall give to the defendant the same rights of delay he

Suspension.

would have had if the judgment had been rendered at the proper time.

Limitation.

SEC. 604. Proceedings to vacate or modify a judgment or order for the causes mentioned in subdivisions four, five and seven, of section five hundred and ninety-seven, must be commenced within two years after the judgment was rendered, or order made, unless the party entitled thereto, be an infant, married woman or person of unsound mind, and then within two years after the removal of such disability. Proceedings for the causes mentioned in subdivisions three and six of the same section, shall be within three years, and subdivision nine within one year after the defendant has notice of the judgment.

Supreme court

SEC. 605. The provisions of this title subsequent to section five hundred and ninety-six shall apply to the supreme court and probate court, so far as the same may be applicable to the judgments or final orders of such courts. The parties shall be limited to the same time in which to commence proceedings, and in estimating time, the probate court shall, for this purpose be considered as holding, in each year, three terms, of four months each, the first commencing on the first day of January of each year.

Provisions.

SEC. 606. Cases pending in appellate courts on writs of error or otherwise, when this code takes effect, shall be conducted to final judgment, as if it had not been adopted, and the liens of judgments and decrees rendered when it takes effect shall be preserved.

TITLE XXV.

Costs.

Non-residents.

SEC. 607. In all cases in which the plaintiff is a non-resident of the county in which the action is to be brought, before commencing such action, the plaintiff must furnish a sufficient security for the costs. The surety must be a resident of the county where the action is to be brought, and approved by the clerk. His obligation shall be complete, simply by indorsing the summons, or signing his name

on the complaint, as security for costs. He shall be bound for the payment of all costs, which may be adjudged against the plaintiff in the court in which the action is brought, or any other to which it may be carried, and for costs of the plaintiff's witnesses, whether the plaintiff obtain judgment or not.

SEC. 608. An action in which security for costs is required by the last section, and has not been given, shall be dismissed on motion and notice by the defendant at any proper time before judgment, unless, in a reasonable time to be allowed by the court, such security for costs be given.

Dismissal.

SEC. 609. If the plaintiff in an action, after its commencement, become a non-resident of the county in which it is brought, he shall give security for costs in the manner and under the restrictions provided in the two preceding sections.

Security for costs.

SEC. 610. In an action in which security for costs has been given, the defendant may, at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court be satisfied that the security has removed from this territory, or is not sufficient, the action may be dismissed, unless, in a reasonable time, to be fixed by the court, sufficient security be given by the plaintiff.

Additional security.

SEC. 611. After final judgment has been rendered in an action in which security for costs has been given as required by this title, the court, on motion of the defendant, or any other person having a right to such costs, or any part thereof, after ten days notice of such motion, may enter up judgment in the name of the defendant, or his legal representatives, against the surety for costs, his executors or administrators, for the amount of the costs adjudged against the plaintiff, or so much thereof as may be unpaid. Execution may be issued on such judgment, as in other cases, for the use and benefit of the persons entitled to such costs.

Judgment.

Execution.

SEC. 612. If any informer, under a penal statute, to whom the penalty, or any part thereof, if recovered, is given, shall dismiss his suit or prosecution, or fail in the same, he shall pay all costs accruing on such suit or prosecution,

Informer.

unless he be an officer whose duty it is to commence the same.

Disclaimer.

SEC. 613. When defendants disclaim having any title or interest, or land or other property, the subject matter of the action, they shall recover their costs, unless for special reasons the court decide otherwise.

Taxation of costs.

SEC. 614. Unless otherwise provided by statute, the costs of motions, continuances, amendments and the like, shall be taxed and paid as the court in its discretion may direct.

Costs.

SEC. 615. Where it is not otherwise provided by this and other statutes, costs shall be allowed of course to the plaintiff, upon a judgment in his favor, in actions for the recovery of money only, or for the recovery of specific real or personal property.

When not recoverable.

SEC. 616. If it shall appear that a justice of the peace has jurisdiction of an action, and the same has been brought in any other court, the plaintiff shall not recover costs; and in all actions for libel, slander, malicious prosecution, assault and battery, false imprisonment, criminal conversation, seduction, actions for nuisance, or against a justice of the peace for misconduct in office, if the damages assessed be under five dollars, the plaintiff shall not recover any costs.

When allowed.

SEC. 617. Costs shall be allowed of course to any defendant upon a judgment in his favor in the actions mentioned in the last two sections.

Apportionment of—

SEC. 618. In other actions the court may award and tax costs, and apportion the same between the parties on the same or adverse sides, as in its discretion it may think right and equitable.

Several actions

SEC. 619. When several actions are brought on one bill of exchange, promissory note or other obligation or instrument in writing, against several parties who might have been joined as defendants in the same action, as allowed by section forty-three of this code, no costs shall be recovered by the plaintiff in more than one of such actions, if the parties proceeded against in the other actions were at

the commencement of the previous action, openly within the territory.

SEC. 620. When a summons is issued to another county than that in which the action or proceeding is pending, it may be returned by mail, and the sheriff shall be entitled to the same fees as if the summons had issued in the county of which he is sheriff.

Summons re-
turned by mail.

TITLE XXVI.

Actions Concerning Real Property.

SEC. 621. An action may be brought by any person in possession, by himself or tenant, of real property, against any person who claims an estate, or interest therein, adverse to him, for the purpose of determining such adverse estate, or interest.

Real actions.

SEC. 622. In an action for the recovery of real property, it shall be sufficient if the plaintiff state, in his petition that he has a legal or equitable estate therein, and is entitled to the possession thereof, describing the same, as required by section one hundred and thirty-six, and that the defendant unlawfully keeps him out of the possession. It shall not be necessary to state how the plaintiff's estate or ownership is derived.

Equitable
estate.

SEC. 623. It shall be sufficient, in such action, if the defendant, in his answer, deny generally, the title alleged in the petition, or that he withholds the possession, as the case may be; but if he deny the title of the plaintiff, possession by the defendant shall be taken as admitted. Where he does not defend for the whole premises, the answer shall describe the particular part for which defense is made.

Possessions
admitted.

SEC. 624. In an action by a tenant in common of real property, against a co-tenant, the plaintiff must, in addition to what is required in section six hundred and twenty-two, state in his petition that the defendant either denied the plaintiff's right, or did some act amounting to such denial.

Tenant in com-
mon.

SEC. 625. In an action for the recovery of real property, where the plaintiff shows a right to recover at the

Lis pendens.

time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover forthwith, holding the property.

Occupying
claimants.

SEC. 626. The parties in an action for the recovery of property, may avail themselves, if entitled thereto, of the relief of the statutes in force for the relief of occupying claimants of land.

Waste.

SEC. 627. If a guardian, tenant for life or years, joint tenant, or tenant in common, of real property, commit waste thereon, he is liable to pay three times the damages which have resulted from such waste, to the person who is entitled to sue therefor.

Forfeiture.

SEC. 628. Judgment of forfeiture and conviction may be rendered against the defendant, whenever the amount of damages, so recovered, is more than two-thirds the value of the interest such defendant has in the property wasted, and when the action is brought by the person entitled to the reversion.

Reasonable
care.

SEC. 629. Any person whose duty it is to prevent waste, and who has not used reasonable care and diligence to prevent it, is deemed to have committed it.

Wilful, tres-
pass.

SEC. 630. For wilful trespass, injuring any timber, tree or shrub on the land of another, or in the street or highway in front of another's cultivated ground, yard or town lot, or on the public grounds of any town, or any land held by this territory for any purpose whatever, the trespasser shall pay treble damages, at the suit of any person entitled to protect or enjoy the property aforesaid.

Just value.

SEC. 631. Nothing herein contained authorizes the recovery of more than the just value of the timber taken from any uncultivated wood land for the repair of a public highway or bridge in its immediate neighborhood.

Remainder or
reversion.

SEC. 632. The owner of an estate in remainder or reversion, may maintain either of the aforesaid actions for injuries done to the inheritance, notwithstanding any intervening estate for life or years.

Heirs.

SEC. 633. An heir, whether a minor or of full age, may

maintain these actions for injuries done in the time of his ancestors as well as in his own time, unless barred by the statutes of limitations.

SEC. 634. Where lands or tenements are sold by virtue of an execution, the purchaser at such sale may maintain his action against any person, for either of the causes above mentioned, occurring or existing after his purchase. Purchaser under execution.

SEC. 635. This provision is not intended to prevent the person who occupies the lands, in the meantime, from using them in the ordinary course of husbandry, or from using timber for the purpose of making suitable repairs thereon. Husbandry and repairs.

SEC. 636. But if, for this purpose, he employ timber vastly superior to that required for the occasion, he will be deemed to have committed waste, and will be liable accordingly. Liability.

Occupying Claimants.

SEC. 637. In all cases, any occupying claimants, being in quiet possession of any lands or tenements for which such person can show a plain and connected title, in law or equity, derived from the records of some public office; or being in quiet possession of, and holding the same by deed, devise, descent, contract, bond or agreement, from and under any person claiming title, as aforesaid, derived from the records of some public office, or by deed duly authenticated and recorded; or being in quiet possession and holding the same under sale on execution or order of sale, against any person claiming title as aforesaid, derived from the records of some public office, or by deed duly authenticated and recorded; or being in possession of and holding any land under any sale for taxes, authorized by the laws of this territory, or any persons who have made a *bona-fide* settlement and improvement which he, she or they still occupy, upon any of the Indian lands lying in this territory; or any person in the quiet possession of any land claiming title thereto, and holding the same under a sale and conveyance made by executors, administrators or guardians, or by any other person or persons, in pursuance of any order of court Occupying claimants.

or decree in chancery, when lands are or have been directed to be sold, and the purchaser or purchasers thereof have obtained title to and possession of the same without any fraud or collusion on his, her or their part, shall not be evicted or turned out of possession by any person or persons who shall set up and prove an adverse and better title to said lands, until said occupying claimant, his, her or their heirs, shall be paid the full value of all lasting and valuable improvements made on said land, by such occupying claimant, or by the person or persons under whom he, she or they may hold the same, previous to receiving actual notice by the commencement of suit on each adverse claim by which eviction may be effected, unless such occupying claimant shall refuse to pay the person so setting up and proving an adverse and better title, the value of the land without the improvements made thereon, as aforesaid, upon the demand of the successful claimant, or his heirs, as hereinafter provided: *Provided*, That this article shall not apply to persons occupying and claiming any lands granted to this territory, or granted to, or purchased by any company to aid in the construction of any works of internal improvement in this territory.

Provided.

Adverse title.

SEC. 638. The title by which the successful claimant succeeds against the occupying claimant, in all cases of lands sold for taxes, by virtue of any of the laws of this territory, shall be considered an adverse and better title, under the provisions of this article, whether it be the title under which the taxes were due, and for which said land was sold, or any other title or claim whatever; and the occupying claimant holding possession of lands sold for taxes, as aforesaid, having the deed of a collector of taxes or a county treasurer, or shall claim under the person or persons who hold such deed or certificate, or any other title or claim whatever, shall be considered as having sufficient title to said land to demand the value of improvements under the provisions of this title.

Journal entry.

SEC. 639. The court rendering judgment in any case provided for by this title, against the occupying claimant,

shall, at the request of either party, cause a journal entry thereof to be made, and thereupon a jury of twelve men shall be impaneled as in other cases, whose duty it shall be immediately to proceed to view the premises in question, and then and there, an oath or affirmation having been administered to them by the clerk of the court before leaving the court room, proceed to assess the value of all lasting and valuable improvements made as aforesaid on the lands in question, previous to the party receiving actual notice as aforesaid of such adverse claim; and shall also assess the damages, if any, which said land may have sustained by waste, together with the net annual value of the rents and profits which the occupying claimant may have received from the same, after having received notice of the plaintiff's title, by service of a summons, and deduct the amount thereof from the estimated value of such lasting and valuable improvements; and said jury shall also assess the value of the land in question, at the time of rendering judgment as aforesaid, without the improvements made thereon, or damages sustained by waste, as aforesaid.

Assessment.

Rents and profits.

Jury.

SEC. 640. Instead of the jury provided for in the preceding section, the parties may agree upon any number of persons less than twelve, who having been sworn as hereinbefore provided, shall proceed to assess the value of such improvements and lands, and whose finding shall be as binding on all parties as if the same was found by a jury of twelve men, as hereinbefore provided.

Agreement.

SEC. 641. The jury shall sign and seal their respective assessments and valuations aforesaid, and return their findings into the court in which they were impanelled without unreasonable delay, and if either party shall think himself or herself aggrieved, by any such assessment or valuation aforesaid, he or she may apply to the court, at the term to which the proceedings are returned, and said court may, upon good cause shown, set aside such assessment or valuation, and order a new valuation, and appoint another jury, as hereinbefore provided, who shall proceed in the same manner as hereinbefore directed.

Duty of jury.

Valuation.

SEC. 642. If the jurors shall report a sum in favor of the plaintiff or plaintiffs in said action, for the recovery of real property on the assessment and valuation of the valuable and lasting improvements, and the assessment of damages for waste, and the net annual value of the rents and profits, the court shall render a judgment therefor without pleadings, and issue execution thereon as in other cases; or if no excess be reported in favor of said plaintiff or plaintiffs then, and in either case the said plaintiff or plaintiffs shall be thereby barred from having or maintaining any action for mesne profits.

Improvements

SEC. 643. If the jurors shall report a sum in favor of the occupying claimant or claimants, on the assessment and valuation of the valuable and lasting improvements, deducting therefrom the damages, if any, sustained by waste, with the net annual value of rents and profits which the defendant or defendants may have received after commencement of the action of ejectment aforesaid, the successful claimant or his heirs, they being minors, may, at his or her or their election, either demand of the occupying claimant the value of the land without improvements, so as aforesaid assessed, and tender a deed of the land in question to the occupying claimant, or he, she, or they may pay the occupying claimant the sum so allowed by the jurors in his favor, within such reasonable time as the court shall allow.

Minors.

SEC. 644. If the successful claimant, his heirs, or the guardian of such heirs, they being minors, shall elect to pay, and do pay to the occupying claimant, the sum so reported in his favor by the jurors, within such reasonable time as the court may have allowed for the payment thereof, then a writ of possession shall issue in favor of said successful claimant, his heirs, or the guardians of such heirs.

Tender.

SEC. 645. If the successful claimant, his heirs, or the guardians of said heirs, they being minors, shall elect to receive the value without improvements so as aforesaid assessed, to be paid by the occupying claimant within such reasonable time as the court may allow, and shall tender a general warranty deed of the land in question, conveying

such adverse or better title within said time allowed by the court for the payment of the money in this section mentioned, and the occupying claimant shall refuse or neglect to pay said money (the value of the lands without the improvements) to the successful claimant, his heirs or their guardians, within the time limited as aforesaid, then a writ of possession shall be issued in favor of said successful claimant, his heirs or their guardians; *Provided*, That in no case shall the successful claimant be entitled to a writ of possession until he has paid the occupying claimant, or his heirs, two-thirds the value of the improvements as reported by the jury.

SEC. 646. The occupying claimant or his heir shall, in no case be evicted from the possession of such land, unless, as is provided in the two preceding sections, where an application is made for the value of improvements under this law; and in all cases where the occupying claimant or claimants, or his or their heirs, shall have paid into court the value of the lands in question without improvements, within the time allowed by the court, (when an election has been made by the successful claimant or claimants, his or their heirs or guardians as aforesaid, to surrender any tract of land under the provisions of this act,) such occupant or his heirs may, at any time after such payment shall have been made, file his, her or their petition in the court where such judgment of eviction was obtained, and obtain a decree for the title of such land, if the same has not been previously conveyed to such occupant as aforesaid.

Eviction.

SEC. 647. The plaintiff shall be entitled to an execution for the possession of his property, in accordance with the provisions of this article, but not otherwise.

Execution.

SEC. 648. Whenever any land sold by an executor, administrator, guardian, sheriff or commissioner of court, is afterwards recovered in the proper action by any person originally liable, or in whose hands the land would be liable to pay the demand or judgment for which, or for whose benefit the land was sold, or any one claiming under such person, the plaintiff shall not be entitled to the possession of the land until he has refunded the purchase money, with

Possession

interest, deducting therefrom the value of the use, rents and profits, and injury done by waste and cultivation, to be assessed under the provisions of this article.

Actions on official Securities.

Sureties.

SEC. 649. When an officer, executor or administrator within this territory, by misconduct or neglect of duty, forfeits his bond or renders his sureties liable, any person injured thereby or who is by law, entitled to the benefit of the security, may bring an action thereon in his own name, against the officer, executor or administrator and his sureties, to recover the amount to which he may be entitled by reason of the delinquency. The action may be instituted and proceeded in a certified copy of the bond, which copy shall be furnished by the person holding the original thereof.

Delinquency.

SEC. 650. A judgment in favor of a party for one delinquency, does not preclude the same, or another party from an action on the same security for another delinquency.

Proceedings on Mandamus.

Mandamus.

SEC. 651. The writ of mandamus may be issued to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station. But, though it may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its functions, it cannot control judicial discretion.

When not to issue.

SEC. 652. This writ may not be issued in any case where there is a plain and adequate remedy in the ordinary course of the law. It may issue on the information of the party beneficially interested.

Alternative writ.

SEC. 653. The writ is either alternative or peremptory. The alternative writ must state concisely the facts showing the obligation of the defendant to perform the act, and his omission to perform it, and command him that immediately upon receipt of the writ, or at some other specified time, he do the act required to be performed or show cause before the court whence the writ issued, at a specified time and

place, why he has not done so; and that he then and there return the writ with his certificate of having done as he is commanded. The peremptory writ must be in a similar form, except that the words requiring the defendant to show cause why he has not done as commanded, must be omitted.

SEC. 654. When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance; in all other cases the alternative writ must be first issued.

Valid excuse.

SEC. 655. The motion for the writ must be made upon affidavit, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

Motion, how made.

SEC. 656. The allowance of the writ must be indorsed thereon, signed by the judge of the court granting it, and the writ must be served personally upon the defendant; if the defendant, personally served, neglect to return the same, he shall be proceeded against as for a contempt.

Indorsement.

SEC. 657. On the return day of the alternative writ, or such further day as the court may allow, the party on whom the writ shall have been served, may show cause by answer made in the same manner as an answer to a petition in a civil action.

Show cause.

SEC. 658. If no answer be made, a peremptory mandamus must be allowed against the defendant; if answer be made containing new matter, the same shall not, in any respect, conclude the plaintiff, who may, on the trial or other proceeding, avail himself of any valid objections to sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance.

Peremptory.

SEC. 659. No other pleading or written allegation is allowed than the writ and answer; these are the pleadings in the case, and have the same effect, and are to be construed and may be amended in the same manner as pleadings in a civil action; and the issues thereby joined must be tried,

Writ and answer.

and the further proceedings thereon had, in the same manner as in a civil action.

Judgment.

SEC. 660. If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained, to be ascertained by the court or jury, or by referees, as in a civil action, and costs; and a peremptory mandamus shall, also, be granted to him without delay.

Bar.

SEC. 661. A recovery of damages by virtue of this title, against a party who shall have made a return to a writ of mandamus, is a bar to any other action against the same party for the making of such return.

Refusal and neglect.

SEC. 662. Whenever a peremptory mandamus is directed to any public officer, body or board, commanding the performance of any public duty, specially enjoined by law, if it appear to the court that such officer or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine, not exceeding five hundred dollars, upon every such officer or member of such body or board. Such fine, when collected, shall be paid into the treasury of the county where the duty ought to have been performed; and the payment thereof is a bar to an action for any penalty incurred by such officer or member of such body or board, by reason of his refusal or neglect to perform the duty so enjoined.

TITLE XXVII.

Partition.

Partition.

SEC. 663. When the object of the action is to effect a partition of real property among several joint owners, the petition must describe the property and the respective interests of the several owners thereof if known.

Number of shares.

SEC. 664. If the number of shares or interests is known, but the owners thereof are unknown, or if there are or are supposed to be, any interests which are unknown, contingent or doubtful, these facts must be set forth in the petition with reasonable certainty.

SEC. 665. Creditors having a specific or general lien upon all or any portion of the property may or may not be made parties at the option of the plaintiff. Specific lien.

SEC. 666. If the lien is upon one or more undivided interests of any of the parties it shall, after partition or sale, remain a charge upon those particular interests or the proceeds thereof. But the due proportion of costs is a charge upon those interests paramount to all other liens. Undivided interests.

SEC. 667. The answers of the defendants must state among other things, the amount and nature of their respective interests. They may deny the interests of any of the plaintiffs, and by supplemental pleading, if necessary, may deny the interests of any of the other defendants. Denial.

SEC. 668. When there are two or more plaintiffs they may reply jointly, or either of them may reply to any or all the answers of the defendants. Joint reply.

SEC. 669. Issues may, thereupon, be joined and tried between any of the contesting parties, the question of costs on such issues being regulated between the contestants agreeably to the principles applicable to other cases. Joinder of issues.

SEC. 670. Each of the parties appearing, whether as plaintiff or defendant, must exhibit his documentary proof of title, if he has any, and must file the same, or copies thereof, with the clerk. Documentary proof.

SEC. 671. If the statements in the petitions and answers are not contradicted in the manner aforesaid, or by the documentary proof exhibited as above required, they shall be taken as true. Contradiction.

SEC. 672. After all the shares and interests of the parties have been settled in any of the methods aforesaid, judgment shall be rendered confirming those shares and interests, and directing partition to be made accordingly. Judgment.

SEC. 673. Upon entering such judgment, the court shall appoint referees to make partition into the requisite number of shares. Referees.

SEC. 674. For good and sufficient reasons appearing to the court, the referees may be directed to allot particular portions of the land to particular individuals. In other Allotments.

cases, the shares must be made as nearly as possible of equal value.

Prejudice. SEC. 675. If it appears to the referees that partition cannot be made without great prejudice to the owners, they shall so report to the court.

Terms of sale. SEC. 676. I satisfied with such report, the court shall cause an order to be entered, directing the referees to sell the premises so situated, and shall also fix the terms of the sale.

Security. SEC. 677. Before proceeding to sell, the referees shall each give security, to be approved by the court or judge thereof, conditioned for the faithful discharge of his duties. At any time thereafter, the court may require further and better security.

Notice of sale. SEC. 678. The same notice of sale shall be given as when lands are sold on execution by the sheriff, and the sale shall be conducted in like manner.

Report. SEC. 679. After completing said sale, the referees must report their proceedings to the court with a description of the different parcels of land sold to each purchaser, and the price bid therefor, which report shall be filed with the clerk.

Incumbrance. SEC. 680. After making the order of sale as aforesaid, the court shall direct the clerk to report whether there be any general incumbrance by mortgage, judgment or otherwise, upon any portion of the property.

Referees report. SEC. 681. If deemed advisable, the court may appoint a referee to inquire into the nature and amount of incumbrances, and report accordingly. From that report an appeal lies to the court.

Five days notice. SEC. 682. The referee shall give the parties interested at least five days notice of the time and place when he will receive proof of the amount of such incumbrances.

Proof. SEC. 683. In taking such proof he may receive, with other evidence, the affidavit of the parties interested.

Proceeds of sale. SEC. 684. If any incumbrance be ascertained to exist, the proceeds of the sale of that portion, after the payment

of costs, or so much thereof as necessary, shall if the owner consent, be paid over to the incumbrancer.

SEC. 685. If the owner object to the payment of such incumbrance, the money shall be retained or invested by order of the court to await final action in relation to its disposition, and notice thereof shall be forthwith given to the incumbrancer, unless he has already been made a party. Final action.

SEC. 686. The court may direct an issue to be made up between the incumbrancer and owner, which issue, when determined, shall be decisive of their respective rights. Respective rights.

SEC. 687. If an estate for life or years be found to exist as an incumbrance upon any part of said property, and if the parties cannot agree upon the sum in gross which they will consider an equivalent for such an estate, the court shall direct the avails of the incumbered property to be invested, and the proceeds to be paid to the incumbrancer during the existence of the incumbrance. Estate for life.

SEC. 688. The proceedings in relation to the incumbrances shall not delay the distribution of the proceeds of other shares in respect to which no difficulties exist. Distribution.

SEC. 689. The court, in its discretion, may require all or any of the parties, before they receive the moneys arising from any sale authorized in this title, to give satisfactory security to refund such moneys and interest, in case it afterwards appears that such parties were not entitled thereto. Security.

SEC. 690. If the sale aforesaid be approved and confirmed by the court, an order shall be entered, directing the referees, or any two of them, to execute conveyances pursuant to such sales. But no conveyance can be made until all the money is paid, without receiving from the purchaser a mortgage of the land so sold or other equivalent security. Orders.

SEC. 691. Such conveyances so executed, being recorded in the county where the premises are situate, shall be valid against all subsequent purchasers, and also against all persons interested at the time, who were made parties to the proceedings in the mode pointed out by law. Subsequent purchasers.

Non agree-
ment.

SEC. 692. If the owner of any share thus sold has a husband or wife living, and if such husband and wife do not agree as to the disposition that shall be made of the proceeds of such sale, the court must direct it to be invested in real estate under the supervision of such person as it may appoint, taking the title in the name of the owner of the share sold as aforesaid.

Disapproval.

SEC. 693. If the sales are disapproved, the money paid and the securities given must be returned to the persons respectively entitled thereto.

Monuments.

SEC. 694. When partition is deemed proper, the referees must mark out the shares by visible monuments, and may employ a competent surveyor and the necessary assistants to aid them.

Report to be
in writing.

SEC. 695. The report of the referees must be in writing, signed by at least two of them. It must describe the respective shares with reasonable particularity, and be accompanied by a plat of the premises.

Allotments.

SEC. 696. Unless the shares are allotted to their respective owners by the referees as hereinbefore contemplated, the clerk shall number the shares and then draw the names of the future owners by lot.

Partition and
sale.

SEC. 697. When partition can be conveniently made of part of the premises, but not of all, one portion may be partitioned and the other sold as hereinafter provided.

Report set
aside.

SEC. 698. On good cause shown, the report may be set aside, and the matter again referred to the same or other referees.

Confirmation.

SEC. 699. Upon the report of the referees being confirmed, judgment thereon shall be rendered that the partition be firm and effectual forever.

Notification.

SEC. 700. When all the parties in interest have been duly notified to appear and answer, either by the service of the petition and notice, or by the publication prescribed by law, any of the proceedings above authorized shall be binding and conclusive upon them all. If only a portion of such parties be served, they only shall be bound by such proceedings.

SEC. 701. The judgment of partition shall be presumptive evidence of title in all cases, and as between the parties themselves it is conclusive evidence thereof, subject however, to be defeated by proof of a title paramount to, or independent of, that under which the parties held as joint tenants, or tenants in common. Presumptive evidence.

SEC. 702. All the costs of the proceedings in partition shall be paid in the first instance by the plaintiffs, but eventually by all the parties in proportion to their interests, except those costs which are created by contests above provided for. Costs.

SEC. 703. Any person claiming to hold an incumbrance upon any portion of the property involved in the suit, may, in default of the owner, appear and act as his representative in any of the proceedings under this title. Incumbrance.

SEC. 704. Persons having contingent interests in such property may be made parties to the proceedings, and the proceeds of the property so situated (or the property itself in case of partition), shall be subject to the order of the court until the right becomes fully vested. Contingent interests.

SEC. 705. The ascertained share of any absent owner shall be retained, or the proceeds invested for his benefit. Absent owners

TITLE XXVIII.

Contempts.

SEC. 706. Every court of record shall have power to punish by fine and imprisonment, or by either, as for criminal contempt, persons guilty of any of the following acts: Contempts.

First, Disorderly, contemptuous or insolent behavior towards the court, or any of its officers, in its presence.

Second, Any breach of the peace, noise, or other disturbance tending to interrupt its proceedings.

Third, Wilful disobedience of, or resistance wilfully offered to any lawful process or order of said courts.

Fourth, Any wilful attempt to obstruct the proceedings, or hinder the due administration of justice in any suit, proceedings or process pending before the courts.

Fifth, The contumacious and unlawful refusal of any person to be sworn or affirmed as a witness, and when sworn or affirmed, the refusal to answer any legal and proper interrogatory and for no other.

Summary punishment.

SEC. 707. Contempts committed in the presence of the court may be punished summarily; in other cases the party upon being brought before the court, shall be notified of the accusation against him, and have a reasonable time to make his defense.

Liability.

SEC. 708. Persons punished for contempt under the preceding provisions, shall nevertheless be liable to indictment, if such contempt shall amount to an indictable offense; but the court before which the conviction shall be had, may, in determining the punishment, take into consideration the punishment before inflicted, in mitigation of the sentence. In cases of contempt, the punishment shall be by fine or imprisonment, or both; but no fine shall exceed the sum of five hundred dollars, and no imprisonment shall exceed the period of five days, except when the contempt consists in the omission to perform an act which is yet in the power of the person to perform, in which case he may be imprisoned until he has performed it.

TITLE XXIX.

Appeals from the District to the Supreme Court.

Appeals.

SEC. 709. Appeals hereafter to be tried must be taken within one month from the time judgment is rendered, by service of notice, in writing, on the adverse party, his agent or attorney, and also the clerk of the court in which the proceedings were had, stating the appeal from the same, or some specific part thereof.

Transcript.

SEC. 710. Upon receiving the notice and the payment of the legal fees therefor, by the appellant, the clerk shall forthwith transmit to the supreme court, a transcript of the record in the cause, or so much thereof as the appellant directs, to which shall be appended the notice of the appeal and the written directions of the appellant applying therefor.

SEC. 711. All proper entries made by the clerk, and all papers pertaining to the cause and filed therein, (except subpoenas, depositions, and other papers that are used as mere evidence), are to be deemed parts of the record. But the transcript of motions, affidavits and other papers, when they relate to collateral matters, should not be certified, unless by directions of the appellant. If so certified, when not material to the determination of the appeal, the court may direct the person blamable therewith to pay the costs thereof.

Record.

SEC. 712. If the other co-parties refuse to join, they are precluded from any benefits arising from the appeal, unless from the necessity of the case; but should they fail to appear, and refuse to join in the appeal, they shall be liable for their share of the costs already made, only.

Co-parties.

SEC. 713. The death of any or all the parties shall not abate the suit, but the names of the proper persons being substituted, the cause may proceed, but to promote the ends of justice, the court may grant a continuance in such cases.

Abatement.

SEC. 714. An appeal from the judgment of the court, shall be a stay of execution, except to any portion of the judgment not appealed from.

Appeal.

SEC. 715. If execution has been issued before such appeal taken, the clerk shall recall it.

Execution.

SEC. 716. Property levied upon and not sold at the time of such recall, shall be returned forthwith by the sheriff to the judgment debtor.

Return of property.

SEC. 717. The court may reverse or affirm the judgment, or render such judgment as the district court should have done.

Reversal.

SEC. 718. If the judgment be affirmed, the court shall award the appellee such damages as they may deem just, not exceeding twelve per cent. per annum.

Affirmance.

SEC. 719. If the court affirm the judgment, it may remand the cause to the district court to be carried into effect, or it may issue the necessary process for that purpose to the sheriff of the proper county.

Remand.

Restoration.

SEC. 720. If by the determination of the cause, the appellant is entitled to a restoration of money or property that was taken from him under the judgment below, then either court may award a writ of restoration or execution for the purpose of restoring the property or the value thereof.

Bona-fide purchaser.

SEC. 721. Property acquired by a *bona-fide* purchaser under a judgment reversed, shall not be effected by such reversal.

Judgment.

SEC. 722. When judgment is rendered against the appellant, the court shall, on motion, render judgment against both appellant and his sureties for the amount of the judgment, damages and costs, in case such damages can be ascertained by the court without trial.

Undertaking.

SEC. 723. No appeal shall be allowed as provided in this title until there is filed by or on behalf of the party applying therefor, an undertaking with two or more good and sufficient sureties conditioned as follows:

First, When the appeal is from a judgment for the payment of money, the undertaking shall be double the amount of the judgment, and for the payment of said amount and all costs and damages if such judgment be not reversed. In all other cases the undertaking shall be as fixed by the court from which the appeal is taken, or by any judge of the supreme court. Also, an affidavit of the party, his agent or attorney, stating that the appeal is not taken for the purposes of delay or vexation, but that it is taken in good faith and for the purpose of obtaining justice.

TITLE XXX.

Informations.

Information.

SEC. 724. An information may be filed against any person unlawfully holding or exercising any public office or franchise within this territory, or any officer in any corporation created by the laws of this territory, or when any public officer has done or suffered any act which works a forfeiture of his office, or when any persons act as a corporation

within this territory without being authorized by law, or if being incorporated, they do or omit acts which amount to a surrender or forfeiture of their rights and privileges as a corporation, or when they exercise powers not conferred by law.

SEC. 725. Such information may be filed by the prosecuting attorney of the proper county whenever he deems it his duty so to do. How filed.

SEC. 726. He must file such information when directed to do so by the governor, the legislative assembly, or the district court. By whom directed.

SEC. 727. Such information shall consist of a plain statement of the facts which constitute the grounds of the proceeding, addressed to the court, which shall stand for an original petition. How.

SEC. 728. Such statement shall be filed in the clerk's office, and summons issued and served in the same manner as hereinbefore provided, for the commencement of actions in the district court. Stationed.

SEC. 729. The defendant shall appear and answer such information in the usual way, and issue being joined it shall be tried in the ordinary manner. Joinder.

SEC. 730. When the defendant is holding an office to which another is claiming a right, the information should set forth the name of such claimant, and the trial must, if practicable, determine the rights of the contesting parties. Office.

SEC. 731. If judgment be rendered in favor of such claimant, he shall proceed to exercise the functions of the office, after he has qualified as required by law. Functions, &c.

SEC. 732. The court after such judgment, shall order the defendant to deliver over all books and papers in his custody or under his control belonging to said office. Delivery of Books.

SEC. 733. When the judgment has been rendered in favor of the claimant, he may at any time within one year thereafter, bring suit against the defendant, and recover the damages he has sustained by reason of the act of the defendant. Limitation.

SEC. 734. When several persons claim to be entitled to

Several persons. the same office or franchise, an information may be filed against all or any portion thereof in order to try their respective rights thereto.

Ouster. SEC. 735. If the defendant be found guilty of unlawfully holding or exercising any office, franchise or privilege, or if a corporation be found to have violated the law by which it holds its existence, or in any other manner to have done acts which amount to a surrender or forfeiture of its privileges, judgment shall be rendered that such defendant be ousted, and altogether excluded from such office, franchise or privilege, and also that he pay the costs of the proceeding.

Judgment. SEC. 736. If the defendant be found to have exercised merely certain individual powers and privileges to which he was not entitled, the judgment shall be the same as above directed, but only in relation to those particulars in which he is thus exceeding the lawful exercise of its rights and privileges.

Information. SEC. 737. When an information is upon the relation of a private individual, it shall be so stated in the petition and proceedings, and such individual shall be responsible for costs in case they are not adjudged against the defendant. In other cases the title of the cause shall be the same as in a criminal prosecution, and the payment of costs shall be regulated by the same rule.

Pretended corporation. SEC. 738. In case judgment is rendered against a pretended, but not real corporation, the costs may be collected from any person who has been acting as an officer or proprietor of such pretended corporation.

Ouster. SEC. 739. If a corporation is ousted and dissolved by the proceedings herein authorized, the court shall appoint three disinterested persons as trustees of the creditors and stockholders.

Trustees. SEC. 740. Such trustees shall enter into bond, in such a penalty and with such security as the court may approve, conditioned for the faithful discharge of their trust.

Negligence. SEC. 741. Suit may be brought on such bond by any

person injured by the negligence or wrongful act of the trustees in the discharge of their duties.

SEC. 742. The trustees shall proceed immediately to collect the debts and pay the liabilities of the corporation and to divide the surplus among those thereto entitled. Liabilities.

SEC. 743. The court shall, upon an application for that purpose, order any officer of such corporation, or any other person having possession of any of the effects, books or papers of the corporation in any wise necessary for the settlement of its affairs, to deliver up the same to the trustees. Delivery of Books.

SEC. 744. As soon as practicable after their appointment, the trustees shall make and file in the office of the clerk of the court, an inventory of all the effects, rights and credits, which come to their possession or knowledge, the truth of which inventory shall be sworn to. Inventory.

SEC. 745. They shall sue for and recover the debts and property of the corporation, and shall be responsible to the creditors and stockholders, respectively, to the extent of the effects which come to their hands, in the same manner as though they were the executors of a deceased person. Recovery of debts.

SEC. 746. When judgment of ouster is rendered against a corporation on account of the misconduct of the directors or officers thereof, such officers shall be jointly and severally liable to an action by any one injured thereby. Joint liability.

SEC. 747. Any person who, without good reason, refuses to obey any order of the court as herein provided, shall be deemed guilty of a contempt of court, and shall be fined in any sum not exceeding five thousand dollars, and imprisoned in the county jail until he comply with said order, and shall be further liable for the damages resulting to any person on account of his refusal to obey such order. Contempt.

SEC. 748. A proceeding of this kind may be instituted in the manner above contemplated for the purpose of annulling or vacating any letters patent granted by the proper authorities of this territory, where there is reason to believe that the same were obtained by fraud, or through mistake or ignorance of a material fact, or when the patentees or those How instituted

claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters were granted, or have, by any other means, forfeited the interest acquired under the same.

TITLE XXXI.

Chancery.

Chancery.

SEC. 749. All actions in chancery shall be commenced by filing, in the office of the register of the proper court, a bill of complaint setting forth the nature of the complaint, agreeably to the usages and practice of courts of equity, and causing a subpoena to be issued thereon, except as hereinafter provided for service on non-residents.

Subpoena.

SEC. 750. The subpoena shall be issued and signed by the register of said court, under the seal thereof, dated on the day it is issued; it shall run in the name of the territory of Wyoming, and shall be directed to the defendant or defendants named in the bill, requiring him or them to appear and answer the said bill on or before the day therein named, as hereinafter provided. If one or more defendants reside in any other county of this territory than that in which the action is rightly brought, then, on the request of the complainant or complainants, subpoena may be issued as aforesaid, against such defendant or defendants, to such county. The subpoena may be served by the sheriff or coroner of the county in which the defendant or defendants to be sued reside, and if there be no sheriff or coroner in such county, then, by such person as the register may designate: *Provided*, That whenever any subpoena shall be served by a person designated by such register, the person making such service shall verify the same by his own affidavit.

Return.

SEC. 751. The subpoena shall be made returnable on the second Monday after the day of its date, except when issued to any other county than that in which the action is brought, it may be made returnable at the option of the party having it issued, on the third or fourth Monday after its date, and shall require the defendant or defendants therein named, to appear and answer the bill on the third Monday after the

date of the return thereof, and the day of the month on which the defendant is required to answer the bill shall be inserted in the subpoena.

SEC. 752. Service of subpoena shall be made by delivering a certified copy thereof to each defendant personally, or by leaving one at his usual place of residence, at any time before the return day. The return must state the time and manner of service, and the officer or person serving the subpoena must make his return at the time therein stated. If the subpoena shall not be returned, served on the defendant or defendants, or any one or more of them, on the return day thereof, the register shall, if required, issue *alias* or *pluries* subpoena against such defendant or defendants as the case may be.

Service.

SEC. 753. In actions against corporations, service may be made upon the president, mayor, chairman of the board of managers, directors or trustees, or other chief officer, or if its chief officer is not found in the county, then, upon its secretary, cashier, clerk or agent, or if none of the aforesaid officers can be found, then by copy left at the office or usual place of business of such corporation; and service of subpoena and return thereof shall be made at the time and in the manner provided in the last preceding section.

Corporations.

SEC. 754. If it shall be shown by the bill properly sworn to, or by affidavit filed in the office of the register, that the action relates to, or the subject thereof is, real estate or personal property in this territory, or that the defendant or defendants has or have claims in interest, actual or contingent therein, or that the relief sought consists wholly or partially in excluding him or them from any interest therein, and that such defendant or defendants is or are non-residents of, and service of subpoena cannot be made upon him or them in this territory, then service on such defendant or defendants who are non-resident, may, without issuance of subpoena, be made by publication of notice four consecutive weeks in some newspaper regularly printed in the county in which the action is brought, and if no newspaper is printed in such county, then in some newspaper printed in this territory

Non-residents.

in general circulation in said county; and such service shall be deemed complete when publication shall have been made in the manner and for the time prescribed as aforesaid, and shall be proved by the affidavit of the printer, or his foreman, or principal clerk, or other person knowing the fact. The notice by publication as aforesaid, shall state the court in which the bill is filed, and the parties to the action; shall contain a summary statement of the object and prayer of the bill, and shall require the defendant or defendants to appear and answer said bill on the third Monday after the completion of such service as aforesaid.

Pro confesso.

SEC. 755. If the defendant or defendants shall fail to appear and file in the office of the register, his or their answer, plea, demurrer or exceptions to the bill within the time herein before required, after service is made by subpoena or by publication of notice, the complainant or complainants may in term time, take and enter the default of such defendant or defendants, and thereupon the bill shall be taken *pro confesso* and as true, and the cause shall be proceeded in *ex parte*, and such decree shall be rendered or order made therein by the court as the nature of the case may require, if the same can be done without answer. If the complainant or complainants require any discovery or answer to enable him or them to obtain a proper decree, he or they may, on leave of the court, have process of attachment against the defendant or defendants, to compel an answer or may have sequestration of the property of such defendant or defendants, and have his or their demand paid out of the proceeds of the property sequestered. *Provided, however,* That for good cause shown on due notice to the adverse party, the court in term, or a judge thereof or master in vacation, may extend the time of pleading required as aforesaid.

Answer.

SEC. 756. Every defendant shall fully answer all the allegations and interrogatories of the bill of complaint, except such as are not required to be answered by reason of exceptions, plea or demurrer thereto allowed, unless the court shall otherwise direct.

Exception.

SEC. 757. Exceptions to bills and answers for impertinence and scandal, shall be in writing, signed by counsel, describing the particular passages which are considered to be scandalous or impertinent, and shall be filed to bills within the time limited for answering the same, and to answers within the time limited for replying to the same. If the court shall find such exceptions to be well taken, it shall order the register to expunge the scandalous or impertinent matter, describing the matter so to be expunged with such particularity that the same may be identified. The register shall expunge such matter by drawing lines in red ink through the same, and in the margin referring to the order of the court, by its date and page of the journal in which it is entered. Exceptions to answers for insufficiency, shall be in writing, signed by counsel, and shall state fully the matter or interrogatory of the bill remaining unanswered, and shall be filed within the time limited for replying to answers. If the court shall find the answer insufficient, it shall fix the time for putting in a further answer, and specify the same in the order. If such further answer shall still be insufficient, exceptions thereto may be filed in the same manner, and within the same time as to original answers; and if the court shall find such answer insufficient, it shall fix some reasonable time for putting in a second further answer, and specify the same in its order. If such second further answer shall be insufficient, like exceptions may be filed; and if the same shall be found by the court to be insufficient, the matter of the bill to which such exceptions apply, and no other parts of the bill shall be taken as confessed, unless, for cause, the court shall otherwise officially order. When exceptions are filed to pleadings, the cause shall be deemed set down to be heard thereon by the court without a reference to a master.

Replication.

SEC. 758. Replications shall be general, and shall be filed on the second Monday after the filing of the answer or plea of the defendant, and thereupon either party may enter in the appearance docket the name of the master before

whom he will take his testimony, and may proceed therein according to law.

Issue.

SEC. 759. After replication is filed, the cause shall be deemed at issue. On default of filing such replication within the time required in the last preceding section, the cause may be set for hearing on bill and answer, unless the court shall otherwise direct.

Meritorious
defense.

SEC. 760. In all cases where a decree or final order shall be made upon a bill taken *pro confesso*, and the defendant or defendants shall have been brought before the court by publication only, such non-resident defendants may, upon motion in open court, have such decree or order opened for a hearing, upon such non-resident defendant or defendants, showing to the satisfaction of the court that he or they have a meritorious defense to the bill, and did not have any actual notice of the pendency of the suit in season to make said defense; *Provided*, Such motion shall be made within three years from the entering of such decree or final order; *Provided further*, That infants, idiots and insane persons, shall have the right to have such decree or order opened at any time within three years after such disability shall be removed.

Amendments.

SEC. 761. Amendments of pleading may be allowed by the court upon motion and notice thereof to the adverse party, or his solicitor, either by a new engrossment of the pleadings containing the matter of the amendment, or, when the adverse party shall consent thereto in writing, by an interlineation of the amendment. Before the time allowed by the court for amending a pleading has elapsed, the same may be extended; but after such time has elapsed, further time shall not be granted, unless the court, for special reasons shown, shall by order grant a further extension. Matter arising after a party has filed his pleading, shall be pleaded only by the proper supplemental pleading. A defendant shall plead to an amended bill on or before the fifth Monday after service upon him, or his solicitor, of notice of the filing thereof.

Verification.

SEC. 762. The bill of complaint and the answer thereto,

except when the affidavit to the answer is expressly waived by the bill, shall be verified by the affidavit of the party filing the same, or by his agent or solicitor. The verification to the bill, and also to the answer or other pleading when required to be made under oath, may be made by the agent or solicitor.

First, When such party is a non-resident of or is absent from the county in which the action is brought.

Second, When all the facts are within the personal knowledge of the agent or solicitor.

Third, When the party is an infant, or of unsound mind, or imprisoned.

SEC. 763. The verification of the bill, answer or other pleading may be made before and certified by a person authorized to administer an oath in the state, territory or foreign country in which the party may be or resides at the time. The official character of such officer, if out of this territory, must be attested by the seal of some court of record within such state, territory or foreign power. The verification of a pleading shall be to the effect that the deponent has read the pleading, or has heard it read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and as to those matters that he believes it to be true, and the substance of the oath administered shall be stated in the jurat.

How made.

SEC. 764. When the complainant or complainants shall waive the necessity of the answer being made on the oath of the defendant or defendants, the answer shall have no other or greater force as evidence than the bill.

Waiver.

SEC. 765. When a bill is taken *pro confesso*, before final decree is made, if deemed requisite, the court may order the complainant to produce documents and witnesses to prove the allegations of the bill, or may examine him on oath, or affirmation, touching the facts therein alleged.

Documents.

SEC. 766. Whenever an execution shall have been issued against the property of any defendant, on a judgment at law or decree in equity, and shall have been returned

Execution.

unsatisfied, in whole or in part, the party issuing such execution, may file a bill in chancery against such defendant or defendants, and any other person or persons, to compel the discovery of any real estate, personal property, money or other thing in action due to him or them, or held in trust for him or them; and from and after the date of the service of the subpoena issued on such bill, or the first publication of notice as hereinbefore required, as the case may be, the action shall be deemed pending so as to charge all real estate, personal property, money or other thing in action belonging to or held in trust as aforesaid, for said defendant or defendants, with a lien thereon, as in case of attachment at law, and the same shall be subject to the final decree or order of the court which shall be made in the cause. And like proceedings may be had to compel the discovery of a decedent's property, whose administrator conceals and misapplies the same.

Discovery.

SEC. 767. The court shall have power to compel such discovery as is provided in the last preceding section, and to decree satisfaction of the sum remaining due on such judgments or decrees out of the proceeds of the sale of any real estate or personal property, or out of any money or thing in action belonging to the defendant or defendants, which shall be discovered by the proceeding in chancery; and the court is empowered to make all necessary decrees for the sale of real estate or personal property, and to enforce the collection of all money or other thing in action, of such defendant or defendants, discovered as aforesaid; *Provided*, That no answer made to any bill filed under this and the last preceding section shall be read in evidence against the defendant or defendants on the trial of an indictment for the fraud charged in the bill.

Abatement.

SEC. 768. No action shall abate by reason of the death, marriage or disability of any party, if the cause of action survive and continue. In either case, the action may be revived and continued by or against the representative of such deceased, or disabled, or married party, by motion made

in open court, within one year after the death, marriage or disability of the party, or afterwards by supplemental bill and service of subpoena or publication of notice thereof, according to the provisions of sections numbered seven hundred and fifty-two or seven hundred and fifty-four of this code, as the case may be. In case of any transfer of interest, the action may be continued in the name of the original party; or the court may allow the person to whom the interest is transferred to be substituted in the action by motion or supplemental bill as aforesaid.

SEC. 769. In all actions in chancery and actions to obtain title to lands, if there be persons interested in the same whose names are unknown, it shall be lawful to make such persons parties to such suits or proceedings by the name and description of persons unknown, or unknown heirs or devisees of any deceased person who has been interested in the subject matter of the action, previous to his or her death; but in all such cases, the affidavit shall be filed in the office of the register, by the party desiring to make any unknown person a party, stating that the names of such persons are unknown to him, and that he has made diligent enquiry to ascertain the name or names of such unknown person or persons, and process shall be issued against all parties by the name and description given as aforesaid, and publication of notice, as is required in section seven hundred and fifty-four, shall be sufficient to authorize the court to hear and determine the action as though all parties had been sued by their proper names.

Description of parties.

SEC. 770. All decrees, orders and proceedings made or had with respect to such unknown persons shall have the same effect and be as binding and conclusive upon them, as though such action or proceeding had been instituted against them by their proper names.

Unknown persons.

SEC. 771. Whenever a decree shall be made in any suit in chancery, directing the execution of any deed or other writing, and the party against whom the same shall have been entered, shall not comply therewith within the time required, it shall be lawful for the court, by an order to

Commission.

direct a master or specially appoint a commissioner to execute the same. The execution thereof by such master or commissioner shall be as valid in law to pass, release or extinguish the right, title and interest of the party on whose behalf it is executed, as if it had been executed by such party in proper person in conformity with such decree; and such deed or other writing, if it relate to land, shall be recorded in the office of the register of deeds of the county wherein the lands lie, in the same manner and with like effect as deeds are therein recorded.

Terms of sale. SEC. 772. In all cases where a sale of property is decreed, the court may direct the same to be made for cash, or on such credit and on such terms as it may deem best and most equitable to the interests of the several parties.

Lien. SEC. 773. All decrees rendered for the payment of money, and for the sale of real estate or personal property, shall be and remain a lien upon the real estate of the defendant or defendants within the county in which the action is brought for the period of five years, and if the amount of such decree, or any balance thereof, shall remain uncollected by the usual proceedings in chancery, the same may be collected by execution, as in cases of execution upon judgments at law.

Lia pendens. SEC. 774. When the subpoena has been served, or publication of notice is first made, the action is deemed pending, so as to charge third persons with notice of its pendency; and while pending, no interest can be acquired by third persons in the subject matter thereof, as against the complainant's right or title thereto.

Cross bill. SEC. 775. Any defendant may, after filing his answer exhibit and file his cross bill, containing interrogatories to the complaint or complaints, and call upon him or them to make answer thereto. In such cases the complainants shall be held to answer, plead, demur or except to such cross bill, in the same manner and under the same penalties that a defendant or defendants are hereinbefore required to answer, plead, demur or except to an original bill. If the cross bill is filed in term time, the complainant or complainants shall

answer within such time as the court may order ; if filed in vacation, the complainant or complainants shall answer such cross bill within the time hereinbefore prescribed for defendants to answer original bills ; and the issuance, service and return of subpoena, or publication of notice in case of non-residents, shall be the same as hereinbefore provided in the commencement of actions in chancery.

SEC. 776. If the complainant or complainants shall fail to answer all the allegations and interrogatories of the cross-bill, his bill shall be dismissed with costs, or the new matter set out in the defendant's cross-bill shall be taken *pro confesso* and as true, and a decree entered accordingly.

Dismissed.

[SEC. 776. The complainant or complainants shall not be compelled to file his or their answer to any cross bill until the defendant shall have filed a sufficient answer to the complainant's bill.]

Sufficient answer.

SEC. 777. No complaint shall be allowed to dismiss his bill, after a cross bill has been filed, without the consent of the defendant.

Consent.

SEC. 778. When a bill is defective for want of parties, the same not appearing on the face of the bill, the defendant may suggest the defect in his answer, stating the name and residence of the party who should be impleaded in the bill, together with his interest in the subject matter in controversy. The complaint may have the cause set down for argument on that objection only by entering on the appearance docket, an entry to the effect following, to-wit: "Set down upon the defendant's objection for want of parties." Where the complainant shall not so set down his cause, but shall proceed therewith to a hearing, notwithstanding an objection for want of parties, he shall not, at the hearing of the cause, if the defendant's objection be then allowed, be entitled to an order as of course for liberty to amend his bill, but the court shall be at liberty to dismiss the bill. If a defendant shall, at the hearing of a cause, object that a suit is defective for want of parties, not having by plea or answer taken the objection, and therein specified by name and description the parties to whom the objection applies,

Defective bill.

the court, if it shall think fit, shall be at liberty to make a decree, saving the rights of the absent parties.

Proofs.

SEC. 779. The master who is charged by a party with the taking of testimony, shall, by order in such case, fix a time and place for the taking of such proofs, giving not less than five days notice thereof to the parties, their counsel or solicitors, and the proofs shall be taken in presence of the parties or their agents, or such of them as may attend, and the examination of witnesses shall be conducted, as near as may be, in the mode now used in common law courts. The deposition shall be reduced to writing by the master, and shall be taken in the form of interrogatories and answers, unless the parties agree that it may be taken in the form of narrative, and when complete, shall be signed by the witness in the presence of the parties or their counsel, or such of them as may attend, but if the witness refuse to sign his deposition, then the master shall state the fact and sign the same. Any question or other matter of evidence which may be objected to, shall be noted by the master at the time, stating the objection, but shall not have power to decide on the competency, materiality or relevancy of the question or other matter of evidence. If either party shall fail to attend at the time and place of examination, the master may proceed *ex parte*, or in his discretion may adjourn the examination to a future day, giving notice to the absent party or his solicitor, of such adjournment. The master is empowered to issue subpoena to witnesses and process of attachment against such as make default, and to adjourn the examination and proceedings before him, from time to time, until the same is completed, subject, however, to the order of the court.

Notice.

Special master

SEC. 780. Upon the application of either party, the court may, in its discretion, appoint a special master in any cause.

Deposition.

SEC. 781. The deposition of any witness residing in any other county in this territory than that in which the action is pending, may be taken, upon notice to the adverse party, stating the title of the cause, the name of the court

in which the same is pending, the time and place of taking the deposition, and that the same will be used on the hearing of the cause; such notice shall be served on the adverse party, his agent or attorney of record, by delivering to said party, his agent or attorney a copy thereof, or by leaving a copy at his usual place of residence, and shall be served so as to allow said party sufficient time, by the usual route of travel, to attend, and one day for preparation, exclusive of Sundays and the day of service, and the examination may, if so stated in the notice, be adjourned from day to day.

SEC. 782. Depositions taken under and by virtue of the last preceding section, may be taken before a judge or clerk of the supreme or district court, or before a justice of the peace, notary public, or mayor or chief magistrate of any city of this territory. How taken.

SEC. 783. On application of the parties to an action, or any one or more of them, to the register of the court of the county in which the action is pending, the said register shall issue a commission or commissions to take depositions of witnesses in any other county of this territory, or in any state, territory or foreign country, upon interrogatories filed in his office. Register.

SEC. 784. Before the issuance of any such commission, the party applying therefor, shall give ten days notice to the adverse party, of the filing of such interrogatories, and that unless cross interrogatories shall be filed in the office of said register within that time, a commission will be issued *ex parte*. The party making the application shall name on his part a commissioner, with the name of the county, city or town, and state, territory or foreign country, of his residence; and the adverse party, on filing cross interrogatories, may also name on his part a commissioner of the same place. The testimony may be taken before the commissioners, jointly or before one of them, upon notice to the other, of the time and place of taking the same; and the fact of giving such notice must be stated in the return of the commissioner taking the same. Notice.

SEC. 785. The commissioner or commissioners thus Powers.

designated and appointed, shall have full power and authority to administer oaths and affirmations to the witnesses or parties examined before him or them, to issue subpoenas to said witnesses, and issue process of attachment against such as make default.

Non resident.

SEC. 786. When the party against whom the deposition is intended to be taken, is a non-resident of this territory, and has no agent or attorney of record in the county in which the action is pending, then a copy of the notice required by section seven hundred and eighty-one, for taking the deposition, one copy of the notice required by section seven hundred and eighty-four, of filing interrogatories, as the case may be, shall be filed in the office of the register of the court in which the action is pending, fifteen days prior to the time of taking the deposition or the issuance of the commission, and a minute thereof, and of the date of filing such copy, shall be entered on the appearance docket of said court in the cause.

Witnesses.

SEC. 787. Every deposition taken under the provisions of this title, shall be written in the presence of the officer or person taking the same, either by such officer or person, the witness or some disinterested person, and subscribed by the witness.

Certificate.

SEC. 788. The officer, commissioner or commissioners taking the deposition, shall annex thereto a certificate, showing,—

First, That the witness was first duly sworn to testify the truth, the whole truth, and nothing but the truth.

Second, That the deposition was reduced to writing in his or their presence, by him or them, or by the witness or some disinterested person, naming him, and that the same was written in the presence of the witness, and by him subscribed at the time of taking the same.

Indorsement.

SEC. 789 The deposition so taken shall be sealed up and indorsed with the title of the cause and the name of the person taking the same, and by him addressed and transmitted to the register of the court where the action is pending. It shall remain sealed until opened by order of

the court, or at the request of a party to the action or his counsel or solicitor.

SEC. 790. The deposition taken as aforesaid, may be read in evidence on the trial, or hearing of the cause in which it is taken, and also in any subsequent action wherein the same matter shall be in dispute between the same parties or persons, their heirs, executors, administrators or assigns. Evidence.

SEC. 791. Exceptions to depositions taken as aforesaid, shall be in writing, specifying the grounds of objection, and shall be filed, with the papers in the cause, and no exceptions shall be regarded except for incompetency, immateriality or irrelevency, unless made in writing, as aforesaid, and filed in the office of the register before the commencement of the trial or hearing of the cause. Exceptions.

SEC. 792. The master or commissioner is empowered to issue summons and command the presence of witnesses, and to punish witnesses for neglect or refusal to obey his summons, or for refusal to testify when present, unless exempt by statute from giving evidence by commitment to the jail of the county for contempt; and all sheriffs and constables in this territory are hereby required to serve and return all process issued by masters or commissioners in the taking of depositions. The master shall file the depositions within ten days from the taking thereof. Summons.

SEC. 793. In all actions in chancery, either party may appeal from the decree rendered or final order made by the district court, to the supreme court of this Territory. The party appealing shall, within thirty days from the date of rendition of such decree or the making such final order, file in the office of the register of the court in which the action is brought, a notice in writing of such appeal, and upon the filing of such notice as aforesaid, and causing a minute thereof, and of the date of such filing to be made in said cause upon the appearance docket of said court, the appeal shall be deemed properly taken. Appeal.

SEC. 794. No appeal taken as aforesaid shall operate as a supersedeas, unless the appellant or appellants shall, within the time aforesaid, execute or cause to be executed, a Supersedeas.

bond on his or their part, to the adverse party, with one or more sureties as follows :

First, When the decree or final order appealed from directs the payment of money, the bond shall be in double the amount of the decree or final order, conditioned that the appellant or appellants will prosecute such appeal without delay, and pay all condemnation money and costs which may be found against him or them on the final determination of the cause by the supreme court.

When to operate as

Second, When the decree or final order directs the execution of a conveyance or other instrument, the bond shall be in such sum as may be prescribed by any district court of this territory, or any judge thereof in vacation, conditioned that the appellant or appellants will prosecute such appeal without delay, and will abide and perform the decree which shall be rendered, or the final order which shall be made by the supreme court in the cause ; but instead of such bond, the appellant or appellants may execute the conveyance or other instrument, and deposit the same with the register of the court, to abide the decree or final order of the appellate court.

Third, When the decree or final order directs the sale or delivery of possession of real estate, the bond shall be in such sum as may be prescribed as last aforesaid, conditioned that the appellant or appellants will not, during the pendency of such appeal, commit or suffer to be committed, any waste upon such real estate, and will prosecute such appeal without delay, and abide and perform in all things, the decree which shall be rendered, or the final order which shall be made by the supreme court in the cause.

Fourth, When the decree or final order directs the assignment, cancellation or delivery of conveyances, documents or other instruments, the assignment or cancellation may be made and the conveyance, documents or other instruments, thus assigned or cancelled, or to be delivered, may be placed in the custody of the register of the court in which the decree was rendered or final order made, to abide the decree which shall be rendered, or the final order which

shall be made by the supreme court in the cause, or the appellant or appellants may give bond as aforesaid, in such sum as may be prescribed as aforesaid, conditioned that he or they will prosecute such appeal without delay, and abide and perform the decree which shall be rendered or the final order, which shall be made by the supreme court in the cause: *Provided*, That when the application to fix the amount of the bond hereinbefore required, in any case of appeal, is made to any district court or judge thereof other than the district court in which, or the judge before whom the cause has been heard and decided, the party making such application shall give to the adverse party, his agent, counsel or solicitor, at least five days' notice, in writing, of the time and place of making such application.

SEC. 795. Before any bond, executed as aforesaid, shall operate as a supersedeas, the execution of such bond, and the sufficiency of the sureties therein, must be approved by the court in which such decree was rendered, or final order made, or by the judge thereof, in vacation, or by the register of said court, and such approval must be indorsed upon the bond, and signed by said court or person taking the same, and the bond filed in the office of the register of the adverse party.

Approval of
sureties.

SEC. 796. The appellant or appellants shall, within six months from and after the date of the filing in the register's office, a notice of his appeal, procure from said register, and file in the office of the clerk of the supreme court of this territory, a certified transcript of the proceedings had in the cause in the district court, containing the pleadings and the decree rendered, or final order made thereon, and all the depositions of record offered in evidence, and all other evidence of record offered, on the hearing of the cause, and have the cause properly docketed in the said supreme court; and on failure thereof, the decree rendered or final order made in the district court shall stand and be proceeded to as if no appeal had been taken.

Certified trans-
cript.

SEC. 797. Actions in chancery may be commenced and prosecuted and defended by infants or other persons who

Guardian ad
litem.

are under guardianship, or otherwise incapable to sue for themselves, by their general guardians, by guardians *ad litem*, or by their next friend. A guardian *ad litem* shall be appointed by the court, upon the petition of the party who is incapable of prosecuting or defending a cause for himself. If the application for the appointment is not made within the usual time for the appearance, the adverse party may apply to the court to appoint a suitable person as the guardian. No person shall be appointed a guardian *ad litem* who has any interest adverse to the person for whom he is appointed or connected in business with the solicitor or counsel for the adverse party. No money or property belonging to the person for whom the appointment is made, shall be delivered to any guardian *ad litem*, unless he shall, under such directions as the court shall, by order make, give a bond with sufficient security for the faithful application of such money or property, as the court shall direct. Summary application by petition to the court, may be made for all necessary orders directing guardians *ad litem*.

Equity.

SEC. 798. All proceedings in actions in chancery not herein provided, shall be agreeably to the rules and practice in courts in equity.

Parties.

SEC. 799. An action in chancery may be brought and prosecuted to final decree, judgment or order, and all necessary subsequent proceedings thereon, in order to carry into effect such decree, judgment or order, may be had by any person who holds an absolute title to real estate, against any person who claims an adverse estate or interest therein, for the purpose of determining such estate or interest, *Provided however*, That the person claiming such adverse estate or interest is not in possession of the property: *And provided further*, That the provisions of this title shall not apply to the settlement, partition or division of real estate among the heirs of a decedent, where the same is provided for by the intestate laws of this territory.

Preliminary.

Masters in
chancery.

SEC. 800. The district judges in each of the districts in this territory, shall have power to appoint some person

residing in each of the organized counties of said district, as a master in chancery, for said counties respectively, who shall hold his office for three years, unless sooner removed by said judge, and shall keep his office at the county seat; said judges shall only have power to remove any master in chancery within their respective districts, upon proof, in open court, of incompetency or negligence in discharging his duty; and they shall have power at any time to fill all vacancies occasioned by removal as herein provided, by death, resignation or otherwise; *Provided*, There may be two masters appointed in each of the counties of

SEC. 801. Said masters in chancery shall be sworn to faithfully perform the duties of their office, and they shall have power to perform the ordinary duties of master in chancery, together with the duties of a judge of the district court of chancery in vacation.

Powers.

SEC. 802. Whenever the master in chancery for any county shall remove therefrom, or become otherwise incapacitated to discharge the duties of his office, the district court for such county shall declare the office vacant, and appoint another person thereto, in the same manner as if the same had never been filled.

Vacancy.

TITLE XXXII.

General Provisions Applicable to the Whole Code—Process.

SEC. 803. The style of all process shall be "The Territory of Wyoming." It shall be under the seal of the court from whence the same shall issue, shall be signed by the clerk, and dated the day it is issued.

Style of process.

SEC. 804. An order for a provisional remedy or any other process, in an action wherein the sheriff is a party or is interested, shall be directed to the coroner. If both these officers are interested, the process shall be directed to, and executed by a person appointed, as provided in the next section.

Order, how directed.

SEC. 805. The court or judge, or the clerk, in the absence of the judge from the county, for good cause, may appoint a person to serve a particular process or order, who

How served.

shall have the same power to execute it, which the sheriff has. The person may be appointed on the application of the party obtaining the process or order, and the return must be verified by affidavit. He shall be entitled to the same fees allowed to the sheriff for similar services.

Duties of Clerks.

Appearance
docket.

SEC. 806. The clerk of the district court shall keep an appearance docket, a trial docket, journal, a judgment docket, an execution docket, and such other books as may be ordered by the court, or required by law.

What to con-
tain.

SEC. 807. On the appearance docket he shall enter all actions in the order in which they are brought, the date of the summons, the time of the return thereof by the officer, and his return thereon, the time of filing the petition, and all subsequent pleadings and papers, and an abstract of all judgments and orders of the court.

Journal.

SEC. 808. On the journal shall be entered the proceedings of the court of each day, and all orders of the judge in vacation or at chambers, and also all judgments entered on confession or default.

Judgment
docket.

SEC. 809. The judgment docket shall be kept in the form of an index, in which the name of each person against whom a judgment is rendered shall appear in alphabetical order, a statement of each judgment upon its rendition shall be entered therein, containing the names of the parties, the amount or nature of the judgment or costs, and the date of its rendition, and if the judgment be against several persons, the entry shall be repeated under the name of each person against whom the judgment is rendered, in alphabetical order.

Execution
docket.

SEC. 810. In the execution docket the clerk shall enter all executions as they are issued by him. The entry shall contain the names of the parties, the date and amount of the judgment and costs, the date of the execution, and the name of the county to which it is issued. The clerk shall also record in full the return of the sheriff to each execution; and such record shall be evidence of such return, if the original be mislaid or lost.

SEC. 811. When there is no execution out-standig, the clerk of the court in which the judgment was rendered, may receive the amount of the judgment and costs, and receipt therefor, with the same effect as if the same had been paid to the sheriff on an execution; and the clerk shall be liable to be amerced for refusing to pay the same to the party entitled thereto, when requested, and shall also be liable on his official bond. Rec-ipt.

SEC. 812. All writs and orders for provisional remedies, and process of every kind, shall be issued by the clerks of the several courts, upon a *praecipe* filed with the clerk, demanding the same. Praecipe.

SEC. 813. It is the duty of each clerk of the courts to file together and carefully preserve in his office, all papers delivered to him for that purpose, in every action or special proceeding. Duty of clerk.

SEC. 814. He shall keep the papers in each case separate, carefully enveloped in a wrapper, labelled with the title of the cause. Papers, how kept.

SEC. 815. He shall indorse upon every paper filed with him, the day of filing it; and upon every undertaking given under the same, the day of its return to his office. How indorsed.

SEC. 816. He shall, upon the return of every summons served, enter upon the appearance docket the name of the defendant or defendants summoned, and the day of service upon each one. The entry shall be evidence of the service of the summons, in case of the loss thereof. Return of summons.

SEC. 817. He shall keep the records and books and papers appertaining to the court, and record its proceedings. Records and books.

SEC. 818. The provisions of this title shall, as far as they are applicable, apply to the clerks of all courts of record. Provisions.

SEC. 819. The clerk of each of the courts shall exercise the powers and perform the duties conferred and imposed upon [him] by other provisions of this code, by statutes, and by the common law. In the performance of his duties, he shall be under the direction of his court. Duties of clerk

Duties of Sheriff.

Duties of sheriff.

SEC. 820. The sheriff shall indorse upon every summons, order of arrest, or for the delivery of property, or of attachment or injunction, the day and hour it was received by him.

Execution of process.

SEC. 821. He shall execute every summons, order or other process, and return the same as required by law; and if he fail to do so, unless he make it appear to the satisfaction of the court that he was prevented by inevitable accident from so doing, he shall be amerced by court in a sum not exceeding one thousand dollars, upon motion and ten days notice, and shall be liable to the action of any person aggrieved by such failure.

Adjournment.

SEC. 822. If the judge of a court fail to attend at the time and place appointed for holding his court, the sheriff shall have power to adjourn the court, from day to day, until the judge attend, but if the judge be not present in his court within five days after the first day of the term, then the court shall stand adjourned for the term. The sheriff shall exercise the powers and duties conferred and imposed upon him by other provisions of this code, by other statutes, and by the common law.

Miscellaneous Provisions.

Deputy.

SEC. 823. Any duty enjoined by this code upon a ministerial officer, and any act permitted to be done by him, may be performed by his lawful deputy.

Affirmation.

SEC. 824. Whenever an oath is required by this code, the affirmation of a person, conscientiously scrupulous of taking an oath, shall have the same effect.

Time, how computed.

SEC. 825. The time within which an act is to be done, shall be computed by excluding the first day, and including the last; if the last day be Sunday it shall be excluded, and the return day shall be the following Monday.

SEC. 826. A ministerial officer, whose duty it is to take security in any undertaking provided for by this code, or by other statutes, shall require the person offered as surety to make an affidavit of his qualifications, which affidavit may

be made before such officer, and shall be indorsed upon or attached to the undertaking. The taking of such an affidavit shall not exempt the officer from any liability to which he might otherwise be subjected for taking insufficient security.

SEC. 827. The surety in every undertaking provided for by this code or other statute, must be a resident of this territory, and worth double the sum to be secured, over and above all exemptions, debts and liabilities; where there are two or more sureties in the same undertaking, they must, in the aggregate, have the qualifications prescribed in this section: *Provided*, That no judge, justice of the peace, or attorney at law shall be received as, or allowed to become surety on any bond or undertaking, official or otherwise, required by this act, or any other statute of this territory.

Sureties.

Provide.

SEC. 828. The judges of the supreme court shall, at their first session, and every two years thereafter, meet at the capitol of the territory, and revise their general rules, and make such amendments thereto as may be required to carry into effect the provisions of this code, and shall make such further rules consistent therewith as they may deem proper. The rules so made shall apply to the supreme court, the district courts, the probate courts and all other courts of record.

Revision of rules.

SEC. 829. In all actions upon bills of exchange or promissory notes, or other written instruments, whenever any of the parties thereto are designated by the initial letter or letters, or some contraction of the christian or first name or names, it shall be sufficient to designate such person by the name, initial letter or letters, or contraction of the first name or names, instead of stating the christian or first name or names in full.

Parties, how named.

SEC. 830. Any company or association of persons formed for the purpose of carrying on any trade or business, or for the purpose of holding any species of property in this territory, and not incorporated, may sue and be sued by such usual name as such company, partnership or association may have assumed to itself or [be] known by, and it shall not be

Companies, how sued.

necessary in such case to set forth in the process or pleadings, or to prove at the trial, the names of the persons composing such company.

Process, how served.

SEC. 831. Process against any such company or firm shall be served by a copy left at their usual place of doing business within the county, with one of the members of such company or firm, or with a clerk or general agent thereof, and executions issued on any judgments rendered in such proceedings shall be levied only on partnership property.

Security for costs.

SEC. 832. In cases where a company shall sue in its partnership name, such company shall procure the writ to be indorsed by a responsible surety, resident of the county, for costs, or otherwise give security for costs.

Bill in chancery.

SEC. 833. If the plaintiff, in any judgment so rendered against any company or partnership, shall seek to charge the individual property of the person composing such company or firm, it shall be lawful for him to file a bill in chancery against the several members thereof, setting forth his judgment and the insufficiency of the partnership property to satisfy the same, and to have a decree for the debt, and an award of execution against all such persons or any of them as may appear to have been members of such company, association or firm.

Provisions Respecting Certain Actions.

Provisions.

SEC. 834. The provisions of this code do not apply to proceedings in actions or suits pending when it takes effect. They shall be conducted to final judgment or decree, in all respects, as if it had not been adopted; but the provisions of this code shall apply after a judgment, order or decree, heretofore or hereafter rendered, to the proceedings to enforce, vacate, modify or reverse it.

Existing rights

SEC. 835. Rights of civil action given or secured by existing laws, shall be prosecuted in the manner provided for by this code, except as provided in the next section. If a case ever arise in which an action or proceeding for the enforcement or protection of a right, or the redress or prevention of a wrong, cannot be had under this code, the practice of the

common law may be adopted, so far as may be necessary to prevent a failure of justice.

SEC. 836. Until the legislature shall otherwise provide, this code shall not effect proceedings to assess damages for private property taken for public uses, nor proceedings under the statutes for the settlement of estates of deceased persons, nor proceedings under statutes relating to apprentices, bastardy, insolvent debtors or any special statutory remedy not heretofore obtained by action; but such proceedings may be prosecuted under the code whenever it is applicable. Exceptions.

SEC. 837. Where, by general or special statute, a civil action, legal or equitable, is given, and the mode of proceeding therein is prescribed, this code shall not effect the proceedings under such statute, until the legislature shall otherwise provide; but in all such cases, as far as it may be consistent with the statute giving such action, and practicable under this code, the proceedings shall be conducted in conformity thereto. Where the statute designates, by name or otherwise, the kind of action, but does not prescribe the mode of proceeding therein, such action shall be commenced and prosecuted in conformity to this code; where the statute gives an action, but does not designate the kind of action, or prescribe the mode of proceeding therein, such action shall be held to be the civil action of this code, and proceeded in accordingly. Special statutes

Definitions.

SEC. 838. The general terms, "whoever," "any person," "any one," and the relative pronouns, "he," and "they," as referring to these terms, include females as well as males, unless there is some express declaration to the contrary. The word "man" is used to signify a male person of any age, and the word "woman" a female person of any age. Definitions.

SEC. 839. The use of any word expressive of relationship, state, condition, office or trust of any person, as of parent, child, ascendant, descendant, minor, infant, ward, Males and females.

guardian, or the like, or of the relative pronoun "he," or "they," in reference thereto, includes both males and females.

Singular and plural.

SEC. 840. The use of the singular number includes the plural, and the plural the singular, and the words used in the masculine gender include the feminine also, unless by reasonable construction that such was not the intention of the language.

General terms.

SEC. 841. Whenever any property or interest is intended to be protected by a provision of the civil code, and the general term "person," or any other general term is used to designate the party whose property is intended to be protected, the provisions of the civil code, and the protection thereby given, shall extend to the property of the territory, or of any county, and of all public or private corporations.

"Oath."

SEC. 842. The word "writing" includes printing; the word "oath" includes affirmation.

Marks.

SEC. 843. The word "signature" includes the mark of a person unable to write his name; a mark shall have the same effect as a signature, when the name is written by some other person and the mark is made near thereto by the person unable to write his name.

Construction.

SEC. 844. Except where a word, term or phrase is specially defined, all words used in this code are to be taken and construed in the sense in which they are understood in common language, taking into consideration the context and subject matter relative to which they are employed.

Dismissal.

Dismissal.

SEC. 845. The plaintiff may, at any time in vacation or in term, without prejudice to a future action, dismiss any action he may [have] commenced by paying to the clerk the costs that may have already accrued and the fee for entering the dismissal: *Provided*, That if such dismissal be after the defendant has put in an answer claiming affirmative judgment or relief, such defendant shall be allowed to prosecute such claim to judgment.

SEC. 846. The provisions of sections four hundred and seventy-five, four hundred and seventy-six, and four hundred and sixty-seven of this act, shall apply as well to cases now in judgment in the several district courts of this territory, as those hereafter to be determined, and in all such cases the time required by said sections in which to file with said clerk the request—required by section four hundred and seventy-five, the showing required by section four hundred and seventy-six or the bond required by section four hundred and seventy-seven shall be deemed to have expired with the twentieth day after the passage of this act and its approval.

Certain provisions.

SEC. 847. When a judgment is recovered against one or more of several persons jointly indebted upon an obligation, by proceeding as provided in this code, those who were not originally served with the summons and did not appear to the action, may be summoned to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons.

Summons to show cause

SEC. 848. The summons as provided in the preceding section, shall describe the judgment and require the person summoned to show cause why he should not be bound by it, and shall be served in the same manner and returnable within the same time as the original summons. It shall not be necessary to file a new complaint.

What to contain.

SEC. 849. The summons shall be accompanied by an affidavit of the plaintiff, his agent, representative or attorney, that the judgment or some part thereof, remains unsatisfied, and shall specify the amount due thereon.

Affidavit.

SEC. 850. Upon such summons, the defendant may answer within the time specified therein, denying the judgment or setting up any defense which may have arisen subsequently, or he may deny his liability on the obligation upon which the judgment was recovered.

Answer.

SEC. 851. If the defendant, in his answer, deny the judgment, or set up any defense which may have arisen subsequently, the summons, with the affidavit annexed, and the answers shall constitute the written allegations in the case. If he deny his liability on the obligation upon which

Written allegations.

the judgment was recovered, a copy of the original complaint and judgment, the summons, with the affidavit annexed, and the answer shall constitute such written allegations.

Amount of
judgment.

SEC. 852. The issues formed may be tried as in other cases, but when the defendant denies, in his answer, any liability on the obligation upon which the judgment was rendered, if a verdict be found against him, it shall be for the amount remaining unsatisfied on such original judgment, with interest thereon.

Terms.

SEC. 853. For the purpose of proceeding under the provisions of this code, the terms "real estate," "real property" and "realty" shall include mines, mining property, possessory right to lands, and all other property of a fixed and immovable nature, whither the same be of the class or classes above enumerated, or of other classes or kinds of property.

1870.

SEC. 854. This act shall take effect and be in force on and after the first day of January, A. D. one thousand eight hundred and seventy.

Approved, December 10, 1869.

REPEAL.

CHAPTER 76.

AN ACT TO REPEAL AN ACT INCORPORATING THE CITY OF LARAMIE.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

Repeal.

SEC. 1. That the act passed by the Legislature of Dakota territory, December 16, 1868, be and is hereby repealed.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved, 23d November 1869.

SUPREME COURT.

CHAPTER 77.

AN ACT FIXING THE TIME AND PLACE OF HOLDING THE FIRST AND SUBSEQUENT TERMS OF THE SUPREME COURT, AND DEFINING ITS DUTIES.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming, as follows :

SEC. 1. There shall be a term of the supreme court held at the capitol of this territory on the first Monday of May, in the year one thousand eight hundred and seventy, and thereafter there shall be annually held at the capitol a general term of the supreme court on the first Monday of July.

Terms of court

SEC. 2. If there shall not be a quorum of the justices of the supreme court present on the first day of any term, the court shall stand adjourned from day to day, until a quorum shall attend; and said court may, there being a quorum present, adjourn to any time deemed proper by the justices thereof, giving notice of the time to which said court stands adjourned, in a newspaper published at the capitol, the expense of such notice to be paid out of the territorial treasury, like other territorial expenses.

Quorum.

SEC. 3. It shall be competent to notice causes for argument at said adjourned term, the same as though it were a general term, and the causes thus noticed shall stand for argument at said adjourned term, the same as though they were on the calendar of the general term.

Adjourned term.

SEC. 4. It shall be the duty of the supreme court at its first session to prescribe rules of practice for said court, and for the district courts of this territory not inconsistent

Rules of practice.

with the organic act or laws of this territory, and when the said rules are promulgated they shall be as binding upon the several courts and the parties practicing and having business therein, as though the same were enactments of the legislative authority of this territory. The supreme court may prescribe forms of process to be used and the regulations for the keeping of the records and proceedings of the court.

Tests.

SEC. 5. All process issued out of the supreme court shall bear test in the name of the chief justice, and be signed by the clerk of the court, scaled with its seal and made returnable according to law or the rules and orders of the court, and shall be executed by the officer to whom the same is directed.

Opinions.

SEC. 6. The opinion of the justices of the supreme court on any matter pending before it, shall be given in writing and filed with the papers in the case, and when the justices are divided in opinion in any case, the fact of division shall be stated in the final order, and the dissenting justice may file his dissenting opinion if he so wish.

Syllabus.

SEC. 7. It shall be the duty of the clerk of the supreme court under the supervision of the chief justice or one of the associate justices, in case of the absence of the chief justice, to make a synopsis or syllabus of the different decisions at the end of each term, whether general or adjourned, and cause the same to be published in some newspaper published at the capitol.

Reporter.

SEC. 8. When the number of cases decided in said court shall reach one hundred, it shall be competent for the supreme court to appoint a reporter of its decisions, who shall receive such compensation as shall therefor be prescribed by law.

Continuance.

SEC. 9. All matters, suits and causes undisposed of at any term of the supreme court, shall stand continued to the next succeeding adjourned or regular term.

Advice.

SEC. 10. No justice of the supreme court shall practice as an attorney in any of the courts of this territory, nor give

advice touching any cause pending, or to be brought therein.

SEC. 11. The seal of the supreme court shall be that of Seal.
the territory of Wyoming, substituting the words supreme
court, Wyoming territory around the vignette of said seal.

SEC. 12. The supreme court shall appoint a clerk thereof, Clerk.
who shall take an oath before one of the justices of said
court to support the constitution of the United States, the
organic act of the territory of Wyoming, and faithfully
discharge the duties pertaining to the office, and shall give
a bond to the territory of Wyoming in such sum as shall be
prescribed by the court, which bond shall be for the faithful
accounting for all moneys that shall come into his hands as
clerk, and for the faithful discharge of his duty, and shall
be approved by the chief justice, and filed with the auditor
of the territory.

SEC. 13. This act shall take effect and be in force from Effect.
and after its passage.

Approved, November 29, 1869.

DISTRIBUTION OF THE LAWS.

CHAPTER 78.

AN ACT TO REGULATE THE DISTRIBUTION OF THE LAWS OF WYOMING
TERRITORY.

*Be it enacted by the Council and House of Representatives
of the Territory of Wyoming:*

SEC. 1. That the secretary of the territory be, and Laws.
hereby is authorized to distribute the laws of the territory,
as hereinafter prescribed.

SEC. 2. The county clerk of each organized county Requisition.
shall make a requisition on the secretary of the territory for
as many copies of the laws as said county may be entitled
to, and he shall name the conveyance or means of transpor-
tation, and also specify to whom they shall be directed, and

to whose care, and upon the receipt of such requisition, the secretary shall at once forward the required number of laws as specified in the requisition of such county clerk, and the county clerk shall receipt for the same to the secretary, which receipt shall be filed in the office of the secretary of the territory; *Provided*, That the county so obtaining laws be at the cost of the carriage of the same.

Proviso.

Distribution.

SEC. 3. The county clerk shall distribute one copy of the laws to each officer of the county or precinct, and one copy to each notary public.

Delivery to
successor.

SEC. 4. Each county officer shall deliver up to his successor in office all statutes which shall have come into his possession under the provisions of this act, as soon as his successor shall have qualified.

Members of
legislature.

SEC. 5. The members of each legislative assembly shall be furnished by the secretary at the commencement of each session for which they were elected, with one copy each of the laws of the preceding sessions.

Notification.

SEC. 6. It shall be the duty of the secretary upon receiving the laws aforesaid, to notify the county clerk of each and every organized county, that said laws are ready for distribution, and that he can receive the number of copies to which his county is entitled, upon making a requisition for the same.

SEC. 7. This act shall take effect and be in force from and after its passage.

Approved, December 10, 1869.

TIME OF TAKING EFFECT OF CERTAIN ACTS.

CHAPTER 79.

AN ACT FIXING THE TIME OF THE TAKING EFFECT OF CERTAIN ACTS
NAMED THEREIN, AND FOR OTHER PURPOSES.

*Be it enacted by the Council and House of Representatives
of the Territory of Wyoming.*

SEC. 1. That all acts passed at the present session of the legislative assembly of the territory of Wyoming which do not provide in the act itself for the taking effect thereof, shall take effect and be in force on and after the eleventh day of December inst., except as provided in the next succeeding section.

*Acts, when to
take effect.*

SEC. 2. That an act entitled "An act to establish the courts of, and define the jurisdiction of justices of the peace," an act entitled, "An act defining crime and providing for the punishment thereof," An act entitled, "An act to establish a code of civil procedure for the territory of Wyoming," An act entitled, "An act to establish a code of criminal procedure for the territory of Wyoming," shall take effect and be in force on and after the first day of January, one thousand eight hundred and seventy.

Exceptions.

SEC. 3. This act shall take effect and be in force from and after its passage.

Approved, 10th December 1869.

ATTORNEYS AT LAW.

CHAPTER 80.

AN ACT RELATING TO ATTORNEYS AT LAW.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

Attorneys.

SEC. 1. All persons who by the law heretofore in force, were permitted to practice as attorneys and counselors, may continue the practice as such.

Qualifications.

SEC. 2. Any person being a citizen of the United States who has read law for two years, the last of which must be in the office of a regularly practicing attorney, who shall certify that the said applicant is a person of good moral character, and well qualified to practice law, who is actually an inhabitant of this territory, and who satisfies any district court of this territory that he possesses the requisite learning, and that he is of good moral character, may, by such court, be permitted to practice in all district and inferior courts of this territory upon taking the oath, hereinafter prescribed.

Supreme Court.

SEC. 3. The supreme court may, on motion, admit any practicing attorney of the district court to practice in the supreme court.

Motion.

SEC. 4. Any practicing attorney of any state or territory, having professional business in either the supreme or district court may, on motion, be admitted to practice in either of those courts upon taking the oath aforesaid.

Oath.

SEC. 5. The form of the oath aforesaid shall be in substance as follows: "You do solemnly swear that you will support the constitution of the United States, and the

organic act of this territory, and that you will faithfully discharge the duties of an attorney and counselor to the best of your ability," and no practicing attorney shall be taken on any official bond, or bond in any legal proceeding in the district in which he may reside.

SEC. 6. An attorney and counselor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge, or a party to an action or proceeding, or brings suit or commences proceedings without authority therefor, is liable to be disbarred, and shall forfeit to the injured party treble damages, to be recovered in a civil action.

Collusion.

SEC. 7. The court may, on motion for either party, and on the showing of reasonable grounds therefor, require the attorney for the adverse party, or for any one of several adverse parties, to produce or prove, by his own oath or otherwise the authority under which he appears, and until he does so, may stay all proceedings by him, on behalf of the parties, for whom he assumes to appear.

Authority.

SEC. 8. An attorney has a lien for a general balance of compensation upon any papers of his client which have come into his possession, in the course of his professional employment, upon money in his hands belonging to his client, and upon money due to his client, and in the hands of the adverse party in an action or proceeding in which the attorney was employed, from the time of giving notice of the lien to that party.

Lien.

SEC. 9. Any person interested in such matter may release such lien by giving security in a penalty equal to the amount claimed by the attorney, and conditioned to pay the amount that may be finally found for his services.

Security.

SEC. 10. The supreme and district courts may respectively revoke or suspend the license of any attorney or counselor at law to practice therein.

Suspension.

SEC. 11. The following are sufficient causes for such revocation or suspension :

Sufficient Causes.

First, When he has been convicted of a felony, or of a

misdemeanor involving moral turpitude, in either of which cases the record of conviction is sufficient evidence.

Second, When he is guilty of a wilful disobedience or violation of the order of the court, requiring him to do or forbear an act connected with or in the course of his profession.

Third, Neglecting or refusing on demand to pay over money in his hands due or belonging to a client.

Fourth, Destroying, secreting, fraudulently withdrawing, mutilating or altering any paper or record belonging to the files or records in any action or proceeding.

Fifth, For the wilful violation of any of the duties of attorney or counselor.

Proceedings. SEC. 12. The proceeding to remove or suspend an attorney, may be commenced by the direction of the court or on motion of any person interested. In the former case the court must direct some attorney to draw up the accusation; in the latter, the accusation must be drawn up and sworn to by the person making it.

Accusation. SEC. 13. If the court deem the accusation sufficient to justify further action, it shall cause an order to be entered requiring the accused to appear and answer on a day therein fixed, either at the same or subsequent term, and shall cause a copy of the accusation and order to be served upon him personally.

Pleadings. SEC. 14. To the accusation he may plead or demur, and the issue joined thereon shall, in all cases, be tried by the court, all the evidence being reduced to writings filed and preserved.

Judgment. SEC. 15. If the accused plead guilty or fail to answer, the court shall proceed to render such judgment as the case requires.

Appeal. SEC. 16. In case of a removal or suspension being ordered by a district court, an appeal therefrom lies to the supreme court, and all the original papers together with a transcript of the docket entries shall thereupon be transferred to the supreme court, to be there considered and finally

acted upon. A judgment of acquittal in the district court is final.

SEC. 17. An attorney who receives the money or property of his client in the course of his professional business, and refuses to pay or deliver it immediately after demand, is guilty of a misdemeanor. Misdemeanor.

SEC. 18. When the attorney claims to be entitled to a lien upon the money or property, he is not liable to the penalties of the preceding section for the amount of money or property justly held as fees. Fees.

SEC. 19. This act shall take effect and be in force from and after its passage.

Approved, December 9, 1869.

TERRITORIAL SEAL.

CHAPTER 81.

AN ACT ADOPTING A TERRITORIAL SEAL.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming :

SEC. 1. That the seal of the territory of Wyoming shall be of the following design, namely: A norman shield, on the upper half of which is emblazoned a mountain scene, with a railroad train, the sun appearing above the horizon, the figures "1868" below the middle point of the top of the shield. On the first quarter below, on a white ground, a plow, a pick, a shovel, and a shepherd's crook; on the next quarter, namely: the lower point of the shield, on a red ground, an arm upholding a drawn sword; the shield to be surmounted by the inscription, "*Cedant arma toga,*" and the entire design surrounded by the words, "Territory of Wyoming, great seal." Description of seal.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved, December 9th, 1869.

CHEYENNE CHARTER.

CHAPTER 82.

AN ACT TO INCORPORATE THE CITY OF CHEYENNE.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming :

Cheyenne.

SEC. 1. That all that portion of the territory of Wyoming situated on Crow Creek, in the county of Laramie, where the Union Pacific Railroad crosses the same, laid out and platted as a town-site by the Union Pacific Railroad company, under and by the name of Cheyenne, together with all the additions that may hereafter be made thereto according to law, is hereby declared to be a corporation by the name of the City of Cheyenne.

Corporation.

SEC. 2. The said city of Cheyenne is hereby made a body corporate and politic, and invested with all the powers and attributes of a municipal corporation, and may, by its corporate name, sue and be sued, plead and be impleaded, complain and defend in any court of record in this territory or elsewhere; may have a common seal and may alter the same at pleasure; and may take, hold, lease, purchase, convey and dispose of any real, personal or mixed estate for the use of said corporation.

Powers.

SEC. 3. The corporate powers of said city shall be vested in a board of trustees to consist of five members, each of whom shall be a resident householder of said city. Said city shall be divided into four wards, as follows, viz., to wit: All that portion of said city lying and being north of

sixteenth street and east of Ferguson street, shall be known and hereafter designated as the first ward.

Second, That portion of said city lying west of Ferguson street and north of Sixteenth street, shall be known and hereafter designated as the second ward.

Third, That portion of said city lying and being south of Sixteenth street and west of Ferguson street, shall be hereafter known and designated as the third ward.

Fourth, And all that portion of said city lying and being south of Sixteenth street and east of Ferguson street, shall be known and designated as the fourth ward; *Provided*, That _____ and _____ shall constitute the first board of trustees, who shall hold their offices until the thirty-first day of December, A. D. eighteen hundred and seventy, and until their successors shall be elected and qualified, and one of said board of trustees shall hereafter be a resident of, and chosen from each of said wards, and one shall be elected by the city at large.

Trustees.

SEC. 4. The board of trustees shall have power at their first meeting to appoint one of their members president of the board, who shall be "ex-officio," mayor of said city, and who shall perform and discharge all such duties as shall be prescribed by the ordinances of said city.

President.

SEC. 5. Said board of trustees shall also elect one of their number vice-president of the board, who, during the absence of the president from the city, or his inability to act from any cause, shall do and perform all such duties as are required by the ordinances of said city, and of right appertaining to the office of president of the board.

Vice president.

SEC. 6. Said board of trustees shall also have power at their first meeting, or as soon thereafter as possible, to appoint a city clerk, who shall be "ex-officio" city assessor; a city marshal, who shall be "ex-officio" city collector, and and a treasurer; and said board shall also have power to appoint any other officers for the better government of said city not herein provided for, whenever in their judgment the public interests demand such an appointment.

Clerk and assessor.

SEC. 7. It shall be the duty of said board of trustees

Police justices. to designate two justices of the peace, residents of said city, who shall be styled police justices, and they shall have concurrent jurisdiction to hear and determine all cases arising under the ordinances of said city, and a change of venue may be taken from one of said justices to the other, for like causes and reasons as are or may be required by the code of criminal procedure of this territory, regulating the practice in courts of justices of the peace.

Meeting. SEC. 8. An annual election for the board of trustees herein provided for, shall be held on the last Monday in December in each year, commencing on the last Monday in December, A. D. 1870, and the board elected at said election, shall qualify and enter upon the discharge of their duties on the first Monday in January next thereafter, and shall hold their respective offices for one year, and until their successors are elected and qualified.

Legal voters. SEC. 9. Every legal voter of this territory who shall have been a resident of said city three months, and of the ward in which he offers to vote, ten days next preceding a city election, is hereby declared to be a citizen thereof, and entitled to a vote at said election, and [no] person shall be eligible to any office mentioned in this act, unless, at the time of such election or his appointment, as the case may be, he is a legal voter of said city.

Bond. SEC. 10. The board of trustees before entering upon the discharge of their duties shall each execute and deliver a bond to the city of Cheyenne in the penal sum of one thousand dollars, with two sureties to be approved by the judge of probate of Laramie county, which bond shall be conditioned for the faithful performance of the duties of their offices respectively, and said bond shall be filed with the register of deeds of Laramie county, and recorded in the record of official bonds kept in his office. A certified copy of said record under the seal of the said register of deeds, shall be evidence of the facts therein contained in all courts of this territory.

Oath. SEC. 11. Said board of trustees shall also, before entering upon the discharge of their duties, take and subscribe

an oath or affirmation before the judge of probate, or some justice of the peace in Laramie county, that he will support the constitution of the United States, the provisions of the acts of congress organizing the territory of Wyoming, and to faithfully, honestly, and to the best of his ability, discharge the duties incumbent upon them as trustees aforesaid, which oath shall be attached to or indorsed upon said official bond, and recorded with it, as provided in section ten of this act.

SEC. 12. All other officers of said city shall qualify and give bonds to said city in such sums and manner as shall be prescribed by ordinance of said city.

Other officers.

SEC. 13. The board of trustees shall have regular meetings at least once in each month, and such other meetings as by adjournment or resolution they may direct; and the president of the board shall have power to call special meetings when he deems the same necessary, or any two members of the board may, by written notice, served upon the remainder, call a meeting at any time. The president of the board shall have the right to vote on all questions coming before it, and a majority thereof, including the president, shall constitute a quorum for the transaction of business. They shall keep a journal of all their proceedings, and all their meetings shall be public.

Meetings.

SEC. 14. The board of trustees shall have power to make by laws and ordinances not repugnant to the act organizing the territory of Wyoming, or the laws of said territory for the government of said city, and to levy and collect an annual *ad valorem* tax upon all property within the city of Cheyenne, both real and personal, made taxable by the laws of Wyoming territory, for the territorial and county purposes, which are now in force or may hereafter be enacted, which tax shall not exceed two and one-half per cent. per annum on the assessed value of all property. *Provided*, That they shall also have power to levy an additional amount for the special purpose of paying the interest on bonds of the city as hereinafter provided. They shall also have power to lay out, extend, open, alter and

Ad valorem
tax.*Provided*.

Powers.

repair the streets and alleys, provide for the draining, grading, cleaning, lighting or otherwise improving the same. Also to provide for the construction, repair and preservation of sidewalks, bridges, drains and sewers. To prevent obstructions being made or placed in the streets or alleys, and for the removal of the same. To compel the owners of lots and property to bear the expense of erecting sidewalks and creating other improvements in front of the same, by special tax or otherwise.

Private property.

SEC. 15. Whenever it shall [be] necessary for said corporation to use private property for public purposes, the same shall be condemned in the following manner: The board of trustees shall appoint one referee and the owner or owners of the property so to be condemned, shall appoint one referee, and in the event that they two cannot agree in the valuation of the property, they shall select a third, and the estimate of a majority of them of the valuation of the property appraised, shall be the decision of all, which decision shall be final and binding between the parties.

Fire warden.

Fourth, To provide for the extinguishment of fires, and to that end may appoint a fire warden and engineer whenever in their judgment the public good requires such an appointment; provide for the payment of the same, and may revoke said appointment at any time the public good may demand.

Fifth, To regulate the storage of gunpowder and other explosive material.

Sixth, To determine what are nuisances and to prevent and remove the same.

Police.

Seventh, To create and establish a city police, and describe their duties and compensation, and to provide for the regulation and government of the same.

Taxes.

Eighth, To fix and collect a license tax on and regulate all theatres, circusses, shows, billiard tables, bowling alleys, and all exhibitions and amusements.

Licenses.

Ninth, To fix and collect a license tax on and regulate all taverns, hotels, bar-rooms, saloons, hurdy-gurdy houses, and public dance-houses, on auctioneers, hawkers and peddlers; on all dealers in liquors; on all drays, job-wagons,

or carts, or any other public vehicle running within the limits of said city; also to fix and collect a license tax upon all trades, professions and business not heretofore specified, having regard to the amount of business done by each person or firm thus licensed. .

Tenth, To license, suppress, tax, regulate or prohibit all tippling-houses, raffles, hawkers, dram-shops, public card-tables, peddlers and pawn-brokers.

Eleventh, To regulate, suppress and prohibit gambling houses, public dance houses, disorderly houses or houses of ill-fame. Gambling houses.

Twelfth, To levy and collect an annual tax upon dogs within the limits of said city, and provide for the extermination of all dogs for which such tax shall not be paid. Dogs.

Thirteenth, To provide for the issuance of the licenses before-named on such terms and in such sums as they may deem best.

Fourteenth, To provide all the necessary buildings for the use of said city, and to establish a board of health to prevent the introduction or spread of disease, and provide for the indigent.

Fifteenth, To prevent and restrain any riot, riotous assemblage or disorderly conduct within said city. To close all places of business and amusement on Sunday, and to prohibit and suppress the sale of spiritous liquors on any day of municipal, county or territorial election. Riot.

Sixteenth, To fix and prescribe the punishment for the breach of any city ordinance or resolution, but no fine shall, be imposed for any one offense in any greater sum than one hundred dollars, and no term of imprisonment shall be prescribed for any one offense for a longer term than two months. Fines.

Seventeenth, To fix and prescribe the duties of all officers appointed by them, and to establish fees, salaries and compensation of all officers except the trustees, who shall annually receive a compensation of twelve dollars each. The board of trustees shall have power to remove any and all officers, whenever, in their judgment, the public good will be Removals.

subservd by such removal. To compel the attendance of absent members, to punish members for disorderly conduct, and to expel members for cause, by a two-third vote, to make all necessary contracts and agreements for the benefit of the city.

City tax.

SEC. 16. The said board of trustees shall have power to levy and collect an annual *ad valorem* tax for the year 1869, on all taxable property within the limits of said city, which has not been legally assessed therein for city purposes for said year, and upon which no *ad valorem* city tax has been paid by the owner through its, his or their agent or attorney to said city for said year, which tax so to be levied and collected, shall not be less in amount than twenty-seven and one-half mills on the dollar.

Special tax.

SEC. 17. It shall be the duty of said board of trustees to also levy and collect a special tax upon all taxable property in said city for said year 1869, for the purpose of raising the sum of three thousand dollars, to pay off the unpaid balance of all purchase money of the steam fire engine "T. C. Durant."

Assessment.

SEC. 18. For the purpose of carrying into effect and force the provisions of the two last sections. Said board of trustees shall, at their first meeting, order the assessment contemplated by section 16, to be made, and within one week thereafter, shall make the general and special levy of taxes authorized by said sections 16 and 17.

Collection.

SEC. 19. It shall be the duty of the collector to immediately proceed and collect said tax so levied, by advertising, for four successive weeks, in a newspaper published in said city, the fact that said [taxes] are due, and personally calling upon each and every individual or corporation so taxed, [and] demanding the same; and in the event that any portion of said tax so assessed and levied shall remain unpaid at the expiration of thirty days from the date of the first advertisement, so to be made by the collector, it shall be his duty to collect the same with the ten per centum additional upon said amount, as a penalty for so failing to pay said tax, and also all legal costs

incurred in making said collections, which collection shall be made by said collector in the manner and in accordance with the provisions of the revenue laws of this territory for the collection of territorial and county revenue, except in regard to the time of making the distraint of property necessary to enforce the collection of said tax, which time shall, for the purpose of collecting this tax, be deemed to commence with the expiration of the thirty days hereinbefore referred to.

SEC. 20. All warrants upon the treasury of said city of *City warrants.* Cheyenne, incorporated as stated in section twenty of this act, which have been legally issued and not returned to said city in payment of taxes or licenses, and that shall be outstanding when the said board of trustees hereby created shall be installed into office, shall be receivable by the collector of said city in payment of all taxes and licenses due to said city, except special taxes for specific purposes authorized by law, which taxes shall be paid in lawful currency.

SEC. 21. Said board of trustees may redeem all *Redemption.* warrants or orders upon the treasury of said city legally issued and outstanding, when this act shall take effect to an amount not to exceed twenty thousand dollars, including whatever amount of bonds of said city shall then be issued. The manner of redemption shall be as follows, namely: When the warrants of said city shall be presented to said board in sums of not less than one hundred dollars, said board shall cause the same to be taken up and cancelled, and issue in payment therefor, bonds of the city of Cheyenne, equal in amount with the warrants so cancelled, and in denominations of one, two, three, four and five hundred dollars, which said bonds shall be payable in ten years from the date of their issue, and shall bear an annual interest of ten per cent. per annum, with annual interest coupons attached, payable at such time and place as said board of trustees shall, by ordinance direct.

SEC. 22. That all of such indebtedness of said city of *Limitation.* Cheyenne, to entitle the same to be redeemed in the manner

provided for in the last preceding section, must be presented to the said board of trustees for conversion into bonds of said city as hereinbefore provided, on or before the 1st of May, A. D. 1870. All bonds so issued in payment of the indebtedness of the city of Cheyenne, shall be duly numbered and registered by the clerk of the board of trustees, (city clerk,) and shall be assigned by the mayor, attested by said city clerk under the seal of said city, and countersigned by the city treasurer before being issued, and shall, after becoming due, be paid in the order of their issue.

Warrants, how
drawn.

SEC. 23. No money shall be paid out of the said general fund except by order of the board of trustees. All warrants on said general fund shall be drawn by the president of said board of trustees, on the treasurer of said city, and shall be attested by the clerk of said board, under the seal of said city. Warrants thus drawn shall be paid by the treasurer, in the order of their issue, and not otherwise. When not paid for the want of funds, the treasurer shall indorse the date of presentation across the face of the warrant and the reason why not paid, and the holder will be entitled to receive interest thereon until paid at the rate of twelve per cent. per annum.

Attest.

SEC. 24. All bonds of every kind and matter whatever, all contracts and ordinances must be signed by the president of the board of trustees, and attested by the city clerk, under the seal of said city.

Supplemental
assessment.

SEC. 25. The board of trustees shall fix the time within which the general and special assessments of taxes shall be made, and all such taxes shall be collectable any time after the assessor makes his assessment, except as otherwise provided in sections sixteen, seventeen, eighteen and nineteen of this act, and said board shall have power to order a supplemental assessment and collection of taxes at any time after the first, on property that has not been assessed, and the owner of which has not paid taxes thereon within the year.

SEC. 26. Real and personal property may be sold by

the city marshal for taxes or assessments due said city. The manner of assessing and collecting taxes shall be prescribed by ordinance, and the title shall vest in the purchaser in such sale by the marshal for taxes, as may be provided in the general revenue law of this territory, or as prescribed by ordinance. Upon the sale of real property by the marshal, he shall deliver to the purchaser a deed of such property; which shall be *prima facie* evidence in any and all courts of the territory that the grantee or grantees named therein, or his or their successors in interest, have a good and legal title to the premises described in the deed. Any possession of such property may be obtained in the manner and form provided by law, when the relation of landlord and tenant exists.

Prima facie
evidence.

SEC. 27. It shall be the duty of the board of trustees to make out and publish in a newspaper printed in Cheyenne, at least once every three months, to-wit: In January, April, July and October of each year, a full and detailed statement of the receipts and disbursements, from what sources received, and for what purposes paid out of the treasury during the three months next preceding such report.

Publication.

SEC. 28. It shall be the duty of the board of trustees to provide for the accountability of all officers and other persons elected or appointed under this charter, to whom the receipt or expenditure of any of the funds is intrusted, by requiring of them sufficient security for the faithful performance of their duties; and in case of neglect or refusal on the part of any such officers to furnish the required security within one week after the demand, to declare such office vacant.

Accountability

SEC. 29. It shall be the duty of the treasurer to receive all moneys derived for the benefit of said city from any and every source, and disburse the same only on proper warrants by order of said trustees. He shall keep an accurate and full account of all receipts and expenditures in such manner as the board of trustees shall direct, and he shall at all times keep his books and accounts open for the inspection of the trustees, and shall furnish them when required, with a full

Disbursements

statement of all receipts and expenditures. All warrants on the treasury shall have specified therein the services or indebtedness for which the same are drawn, and shall be redeemed in regular order of registration on the treasurer's books.

Clerk's duties.

SEC. 30. It shall be the duty of the city clerk to keep the corporate seal, papers and books belonging to said city; to attend the sittings of the board of trustees, and to keep a journal of all their proceedings; also to keep a record of all ordinances passed by the board of trustees, which journal and record, after the approval of each sitting of the board, shall be signed by the president, and attested by the clerk. The clerk shall attest all warrants, bonds and licenses issued in pursuance of the orders and ordinances of the trustees; affix the corporate seal thereto; to keep an account in a suitable book, under appropriate heads, of all warrants drawn on the treasury; an account of all licenses issued, date of issue and amount; and shall perform such other duties as may be required of him by the board of trustees.

Marshals duties.

SEC. 31. It shall be the duty of the marshal to collect all taxes, fines and licenses, and to turn them over to the treasurer, taking his receipt for the same, and see that the ordinances of the city are duly enforced, and to perform such other duties as the board of trustees may require of him.

Style of ordinance.

SEC. 32. The style of the ordinances shall be, "The board of trustees of the city of Cheyenne, do ordain." All ordinances before taking effect, shall be published in a newspaper in Cheyenne, for at least one week.

Fines.

SEC. 33. All fines imposed for the violation of city ordinances, may be enforced by imprisonment, at the rate of one day for every two dollars of the fine and costs; or by execution against the property of the delinquent; and it shall be lawful to enforce the payment of the fine and costs imposed on the defendant; to adjudge that the offender shall work upon the public streets or other public works of said city, at the rate of one day for every two dollars of the fine and costs imposed.

SEC. 34. It shall be the duty of the board of trustees herein provided for, to settle with the present officers of the city of Cheyenne, and receive from them all moneys, accounts, books or other evidence of value, together with all property of every kind belonging to said city, and to make a statement for publication of the financial condition of the city from its earliest organization to the present time, and for this purpose the board of trustees shall have the right to employ two or more competent accountants, who shall be allowed for their services such sum or sums of money as the board of trustees shall deem reasonable, to be paid out of the city treasury.

Settlement.

Accountants.

SEC. 35. The board of trustees shall also have power, if in their opinion necessary, to employ three competent persons to prepare for said city a collection of ordinances, which shall be styled, "Ordinances of the city of Cheyenne," and which collection shall contain all the ordinances then in force in said city; but before any ordinance in said collection shall become a law, it shall have been read before said board and referred to an appropriate committee, who shall report thereon at the next regular meeting of the board, when it shall be read again, considered and approved by a majority of the board and recorded by the clerk in a book kept for that purpose, approved by the president of the board, attested by the clerk, and advertised in a newspaper published in said city for at least one week; *Provided however*, That all ordinances now in force in said city shall be and remain in force until repealed by said board of trustees.

Ordinances.

Previous.

SEC. 36. It shall be the duty of the board of trustees, to levy and collect annually at such times and in such manner as they shall determine, a special tax on all taxable property within said city, sufficient to pay [of] the interest [on the] debt of said city for the current year, which tax shall be collected in lawful money or interest bearing coupons then due detached from the bonds of said city.

Special tax.

SEC. 37. In order that the rights of all parties in said city shall be protected and injustice done to no person, the city government hereby created, is declared to be the legal

Legal successor.

successor of the city governments heretofore in existence in said city of Cheyenne, with all the rights, liabilities, and immunities, that of right now or did appertain to its predecessors.

SEC. 38. This act to take effect and be in force from and after its passage and approval by the governor.

Approved, December 10, 1869.

INTERMARRIAGE.

CHAPTER 83.

AN ACT TO PREVENT INTERMARRIAGE BETWEEN WHITE PERSONS AND THOSE OF NEGRO, OR MONGOLIAN BLOOD.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

Miscegenation.

SEC. 1. That any person belonging to the caucasian or white race, who shall hereafter knowingly intermarry with a person of one-eighth, or more negro, asiatic, or mongolian blood, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than three, nor more than seven years.

Felony.

SEC. 2. That any person of one-eighth or more negro blood, or one eighth or more mongolian blood, who shall hereafter intermarry with a white person shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary for not less than one or more than five years.

Misdemeanor.

SEC. 3. That any minister of the gospel, justice of the peace, or other person, authorized by law to solemnize a marriage, who shall knowingly perform a marriage ceremony, marrying persons punished by the provisions of the preceding sections of this act for intermarrying with each other, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment not less than three months nor more than one year, or by fine not less than one

hundred dollars nor more than five hundred dollars, or both imprisonment and fine, in the discretion of the court.

SEC. 4. That any person authorized by law to grant a license to marry, who shall knowingly grant a marriage license to any of the persons referred to in sections one and two of this act, shall be deemed guilty of a misdemeanor, and shall suffer like penalty as provided in the next preceding section. License forbidden.

SEC. 5. This act shall take effect and be in force from and after its passage.

REPEAL.

CHAPTER 84.

AN ACT TO REPEAL THE LAWS OF DAKOTA NOW IN FORCE IN THE TERRITORY OF WYOMING.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming:

SEC. 1. All laws enacted by the legislature of the territory of Dakota, and continued in force in the territory of Wyoming by the organic act thereof, be and the same are hereby repealed. *Provided*, That all rights acquired, and all liabilities incurred under said laws shall remain unimpaired by this act; *Provided*, also, that all suits, actions and proceedings commenced under said laws, shall be prosecuted and conducted to final conclusion as though this act had not passed.

Repeal.

Provide.

SEC. 2. This act to take effect and be in force on and after the first day of January, one thousand eight hundred and seventy.

Approved, 10th December, 1869.

ESTRAYS.

CHAPTER 85.

AN ACT CONCERNING ESTRAYS FOR WYOMING TERRITORY.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming :

Estrays.

SEC. 1. It shall be lawful for any person occupying and possessing land in this territory and being in possession thereof, to take up any estray horse, mule or ass, neat cattle, sheep or swine, found within his inclosed premises at any season of the year, and any estray found around his premises between the first of December and the first of March may be taken up by such person, and any horse, mule or ass, with any portion of harness attached to them, and any oxen, with yoke, that are believed to have strayed away from their owners, may be taken up by any person at any time.

Description.

SEC. 2. It shall be the duty of any person taking up an estray, to send a description of the same to the county clerk, within fifteen days after taking it up, and the county clerk shall immediately record the same, in a book kept for that purpose, for which he shall receive the sum of one dollar. The person taking up the estray shall, within twenty days thereafter, procure the publication of the description of such animal in any paper published in the county for at least two consecutive weeks.

How reclaimed.

SEC. 3. The owner of an estray may, at any time previous to its sale, reclaim the same on proving said property by oath or otherwise, and paying for the advertisement, and a reasonable compensation for any other

necessary expense incurred by the person taking up said
estray.

SEE. 4. In case the parties cannot agree upon the amount of expenses, incurred, they may each choose a disinterested person to act as arbitrators, and the two chosen may choose a third; the decision of the arbitrators shall be final.

SEC. 5. When an estray, if it be a sheep, hog or calf, under the age of one year, has not been reclaimed within six months after advertising the same, it shall become the property of the person taking it up without further proceedings. If the estray be a horse, mule, ass or bull, cow or steer, over the age of one year, it must be reclaimed within six months from the time it was first advertised. If any estray shall not be reclaimed within the time specified, the person taking up the estray shall notify a justice of the peace of the county, who shall appoint two disinterested persons, and administer to them an oath or affirmation, to faithfully and truly appraise said estray, and said appraisers shall make due return thereof, in writing, to said justice of the peace, who shall appoint a day of sale, and cause notice of the time and place of sale to be published at least two weeks consecutively, before the day of sale, in a newspaper printed in the county, and in case there is no newspaper printed in said county, there shall be written or printed notices posted up at the county seat, and such other places as said justice of the peace shall order, and on the day of sale appointed, said estray shall be sold by such justice to the highest bidder, in cash, and the proceeds thereof, after deducting the costs of the proceedings, and the expense of keeping said estray, shall be paid to the county treasurer within five days after the sale, subject to the order of the owner, provided the owner of the said estray shall establish his ownership to the same, to the satisfaction of the county treasurer. If a county within one year from the day of sale and balance is not so claimed within the time so shall be placed by

the said treasurer to the credit of the general school funds of said county.

Place of sale. SEC. 6. The place of sale shall be at the office of the justice before whom the estray is posted.

Disposition of money. SEC. 7. The money received from the sale of an estray shall go into the county school fund, all expenses first being paid.

Appraisers. SEC. 8. The appraisers of estrays shall estimate the value of the necessary labor, trouble and expense of the person in taking up and keeping an estray, taking into consideration the services rendered by the animal.

Compensation. SEC. 9. The appraisers of estrays shall receive fifty cents each for each appraisement, but when more than one animal is taken up at any one time, by one person, they shall all be appraised as one, and the appraisers shall be entitled to compensation for but one appraisement. The justice of the peace shall receive for his services the sum of three dollars.

Costs. SEC. 10. The costs of advertising, appraising, and the services of the justice of the peace, shall be paid by the person taking up the estray, and he shall receive the same with fifty per cent. additional, from the proceeds of the sale of the estray.

Notice. SEC. 11. If any horse or ass not gelded, two years old or upwards, shall be found running at large, it shall be lawful for any person to take up such horse or ass, and forthwith give notice to the owner or keeper, if he be known to the taker-up, and if the owner or keeper do not appear within six days thereafter, and pay to the said taker-up, five dollars, as compensation for his trouble, the taker-up shall proceed to advertise said horse or mule, and the same proceedings shall be had in every respect as hereinbefore provided in the case of estray horses and mules: *Provided*, That the taker-up may, after the expiration of thirty days from the time of advertising, geld or procure to be gelded, the said horse or ass, which shall be done at the risk and expense of the owner, except when such horse or ass is in the owner's herd, or in care of the owner's herder.

SEC. 12. Should any animal, taken up as an estray, ^{Loss} die while in the possession of the person taking it up, he shall not be liable for the loss, unless its death was the result of mistreatment or wilful neglect.

Approved, 9th December, 1869.

SEAT OF GOVERNMENT.

CHAPTER 86.

AN ACT TO ESTABLISH THE SEAT OF GOVERNMENT OF WYOMING TERRITORY.

Be it enacted by the Council and House of Representatives of the Territory of Wyoming :

SEC. 1. The seat of government for the territory of Wyoming is hereby located and established at the city of Cheyenne, in the county of Laramie in said territory. <sup>Seat of gov-
ernment.</sup>

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved 10th December, 1869.

RESOLUTIONS AND MEMORIALS.

CHAPTER 87.

RESOLUTION.

Be it Resolved by the Council and House of Representatives of the Territory of Wyoming :

Extension of
session

That the present session of the legislative assembly of the territory of Wyoming, be, and is hereby extended to sixty days from the twelfth day of October, one thousand eight hundred and sixty-nine.

Approved, November 20, 1869.

CHAPTER 88.

JOINT RESOLUTION FOR AN APPROPRIATION TO DEFRAY THE EXPENSES INCURRED FOR THE TRANSPORTATION OF PRISONERS FROM WYOMING TERRITORY TO THE HOUSE OF CORRECTION AT DETROIT, MICHIGAN.

Appropriation.

Be it Resolved by the House of Representatives, the Council concurring ; That a sum of money not to exceed seven hundred and fifty dollars, be, and the same is hereby appropriated out of any money in the territorial treasury not otherwise appropriated, to defray the expenses incurred in the transportation of prisoners from the territory of Wyoming, to the house of correction at Detroit, Michigan.

Approved, December 8, 1869.

CHAPTER 89.

JOINT RESOLUTION.

Be it Resolved by the Council and House of Representatives of the Territory of Wyoming:

SEC. 1. That the following sums of money be, and the same are hereby appropriated for the objects herein specified to be paid out of any money in the territorial treasury not otherwise appropriated, viz :

Appropriation.

For the expense of transporting and subsisting convicts, three thousand five hundred dollars ; for compensation of territorial officers, five thousand dollars ; territorial officers' contingent fund, three thousand dollars ; for contingent expenses for the governor's office for two years, twelve hundred dollars ; L. L. Bedell and Company, five hundred and eleven dollars and forty-four cents ; for printing, two hundred and thirty-eight dollars and fifty-six cents. That the sum of two hundred and fifty dollars be appropriated for the benefit of William C. Stanley, and two hundred and fifty dollars to Edward Orpen, for compensation of writing up and indexing the journals of both houses.

Approved, December 10, 1869.

CHAPTER 90.

MEMORIAL.

*To His Excellency, U. S. Grant, President of the United States :—*Your memorialists, the legislative assembly of the territory of Wyoming would respectfully represent that by the terms of a treaty between the United States and Shoshone and Bannock Indians, concluded at Fort Bridger, July 3, 1868, and ratified February 16, 1869, a large and valuable portion of the territory of Wyoming, then and still occupied by citizens of the United States for mining and agricultural purposes, was ceded to the Shoshones to the great injury of

Memorial.

the numerous settlers, then and previously occupying and developing that portion of the public domain. The large and flourishing mining community known as Hamilton city or "Miner's Delight," which has already contributed extraordinary amounts of gold dust and bullion to the world, and numerous other gold producing creeks and gulches tributary to the Papo-Agie and Wind rivers, are within the limits of the district ceded as a reservation to those Indians. The whites occupying and cultivating the lands of the Papo-Agie and Wind river valleys were *bona-fide* settlers thereon, a year previous to the conclusion of said treaty, and these settlers and miners are now, and for the past year have been treated as intruders and trespassers, notwithstanding their permanent and valuable improvements, and are almost entirely without the benefits of civil law, being, by virtue of said treaty, placed beyond the jurisdiction of the courts of this territory, a condition of affairs subjecting them to many privations and great injustice.

Bona-fide settlers.

Shoshones.

Your memorialists would further represent to your excellency the fact that the Shoshones could not live in peace upon said reserve, owing to the proximity of that tract of country to the heart of that portion of the territory occupied by their hereditary enemies, the Sioux and northern Cheyennes, who, during the spring, summer and fall, make continuous warlike raids into the valleys of Wind river and Papo-Agie, driving out and slaughtering indiscriminately settlers and Shoshones, and that the expected presence of the Shoshones renders the situation of the settlers more precarious than it would be did the Sioux and Cheyennes not hope to there meet and exterminate the Shoshones. It is further a well known fact to settlers and mountaineers of the district and reservation in question, that for their security in summer, the Shoshones are compelled to emigrate into Utah, and for their subsistence in winter, they are compelled to seek game beyond Owl creek, the northern boundary of their reservation. Thus it is, that while the reservation is utterly valueless to the Shoshones, affording them neither safety from their enemies nor game for their

subsistence, being for them, in fact, neither home nor hunting ground; its acknowledged existence as an Indian reservation but imperils the lives of honest and industrious miners and settlers, the most valuable of citizens, who are engaged in the noble but hazardous work of transforming idle wastes into future profitable states and productive communities, which shall contribute to the power and prosperity of the nation.

Your memorialists would still further represent to your excellency that the Wind river and Papo Agie valleys lie in close proximity to the Sweetwater mining districts, a portion of which is included in the southern part of the reservation of the Shoshones, that the said mining district is composed of an industrious and enterprising population, numbering not less than two thousand souls, engaged principally in developing what is known to be one of the most valuable and extensive gold producing sections in the United States, and these miners depend exclusively on the Papo Agie and Wind River valleys for their supplies of vegetables, and subsistence for their horses, mules and cattle. The existence of the Wind River reservation and the continual threats of expelling settlers from the valleys above mentioned, tends largely to retard the progress and complete development of this most valuable portion of this territory. Therefore, and for other numerous reasons of a similar character, your memorialists pray your excellency to cause to be abrogated that treaty between the United States and the Shoshone Indians, concluded at Fort Bridger, July 3, 1868, and cause to be removed and located elsewhere, the said Indians, to the end that the tract of territory lying between the Sweetwater river and Owl creek may be re-opened for the preemption and settlement by *bona-fide* citizens of the United States; and as in duty bound, your memorialists will ever pray.

Resolved, by the Council and House of Representatives of the Territory of Wyoming, That an authenticated copy of this memorial be forwarded to the Hon. S. F. Nuckolls, delegate in congress from the territory of Wyoming, who is

hereby respectfully requested to present the same to his excellency the President of the United States.

Approved, December 10, 1869.

CHAPTER 91.

MEMORIAL.

To the Honorable, the Senate and House of Representatives, in Congress assembled:

Memorial.

Your memorialists, the legislative assembly of the territory of Wyoming, would respectfully represent that the compensation now allowed by the general government, for members of the legislative assembly of this territory, is but four dollars per diem, a sum totally inadequate to meet the expenses of members attending sessions; the cost of living in this territory is, perhaps, greater than that of any other state or territory in the union. Your memorialists would further represent that day laborers in the greater number of cases in the territory, and in every case in the mining districts, receive five dollars per day, and store clerks from one hundred to one hundred and fifty dollars per month, in occupations which are unattended with the expenses, accompanying members of the legislature who are compelled to neglect their occupations and professions at home to journey

Compensation.

to the capitol for the purpose of attending to the interests of the public; and in order to obtain good and reliable men for this branch of the public service, it would prove economical to offer such compensation as would enable them to live comfortably, without actual loss to themselves while serving their constituents. Your memorialists would further represent, that the compensation of members of Colorado legislative assembly has been increased by your honorable [body] to six dollars per diem, and that the actual cost of living in this territory, exceeds that of our older settled sister territory of Colorado. Therefore, your memorialists believing your honorable body will see and acknowledge the justice and necessity of this memorial, respectfully request

that the relief asked in this case be granted, and your memorialists as in duty bound will ever pray, etc.

Be it Resolved; That a copy of this memorial be forwarded by the Hon. Edward M. Lee, secretary of Wyoming, to the Hon. S. F. Nuckolls, our delegate in congress, who is hereby requested to bring the subject matter of this petition before the senate and house of representatives of the United States, in congress assembled.

Resolution.

Approved, December 10, 1869.

CHAPTER 92.

MEMORIAL.

To the Honorable John A. J. Cresswell, Post Master General:

Your memorialists, the legislative assembly of the territory of Wyoming, would respectfully represent that the Sweetwater mining district of this territory, is one of the most valuable and most rapidly improving portions of Wyoming, that large additions to the population, and extensive additions of permanent capital from both eastern and western cities are constantly being made to that portion of the county, and that the development of that valuable district is largely retarded in consequence of insufficient mail facilities between South Pass and the Union Pacific railway. The business and resources of the Sweetwater district are of the most permanent and enduring character, with every probability of largely increasing for many years in the future, and it is the belief of your memorialists that it is the avowed policy of the present administration to encourage the development of the mining resources of the country, and we would further represent that one of the most effective and certain means by which the general government can open "the strong box" of mineral wealth of the west, is to afford the necessary mail facilities to mining regions. The tri-weekly mail service during the past year between Bryan on

Memorial.

Mail facilities.

Mineral wealth.

the Union Pacific railroad and South Pass having proven totally inadequate to the wants of the people in the Sweet-water mining district, compelling them to rely to a large extent and at great cost on express monopolies for communication with the east and west, and learning that the department had not intended to increase the service on this route; Therefore, your memorialists would respectfully ask for the

Daily service.

establishment of a daily mail service from Bryan or some other point on the Union Pacific railroad to South Pass City, Wyoming territory. And as in duty bound your memorialists will ever pray.

Approved 10th December, 1869.

CHAPTER 93.

A MEMORIAL TO CONGRESS PRAYING FOR AN APPROPRIATION TO ERECT A
CAPITOL BUILDING IN WYOMING TERRITORY.

*To the Honorable, the Senate and House of Representatives
of the United States, in Congress assembled :*

Memorial.

Your memorialists, the legislative assembly of the territory of Wyoming, respectfully ask that an appropriation be made by your honorable bodies for the erection of a capitol building at the seat of government of said territory, and would urge in support of this memorial. That the buildings now used and occupied by the legislative assembly are wholly unsuitable and unfit for such purposes—that said buildings and those used by the several federal officers of this territory, are in separate parts of the city, and rented from private individuals, and are wooden tenements, in all respects unsafe and liable at any time to be destroyed, together with their valuable contents. That the legislative, executive and judicial records, files, libraries, furniture and other valuables, are, at all times, in consequence liable to injury and total destruction, and we regard their preservation of the most vital importance to our infant territory. That the rent now paid (which must increase as the value of property increases) for the several offices, the executive and

Capitol building.

Rents.

secretary's, United States marshal, district attorneys, United States court-room and legislative halls, would, in a very few years, pay the expense of erecting a suitable building for the accommodation of the various federal officers and legislative assembly, and therefore the expenditure of a sum for the purpose above mentioned would be an absolute economy. Your memorialists regard this matter as of the greatest importance to "Wyoming," and would therefore, most earnestly but respectfully pray that an appropriation of not more than forty-five thousand dollars be made for the purpose above stated. And your memorialists, as in duty bound will ever pray.

Appropriation

Resolved, That our delegate in congress be respectfully requested to bring the subject of this memorial to the immediate attention of congress, and use all honorable means to bring about the asked for appropriation.

Resolution.

Approved, December 10, 1869.

CHAPTER 94.

MEMORIAL.

To the Honorable, the Senate and House of Representatives of the United States, in Congress assembled :

Your memorialists, the legislative assembly of Wyoming territory, would earnestly, but respectfully represent that the salaries now allowed our chief justice and his associates from the United States, is altogether inadequate for their maintenance or support. We would also represent that officers of a like character receive the same compensation in older and more wealthy territories than this is, and where the necessities of life are much cheaper than here. Your memorialists would recommend that an appropriation be made by congress at its present session for the purpose of increasing the salaries of these officers from twenty-five hundred dollars their present salary, to thirty-five hundred

Memorial.

Judge salaries.

dollars each, per annum. And as in duty bound, your memorialists will ever pray.

Resolution.

Resolved. That our delegate in congress be respectfully requested to bring the subject of this memorial to the immediate attention of congress, and use all honorable means to bring about the asked for appropriation.

Approved, December 10, 1869.

CHAPTER 95.

A MEMORIAL AND JOINT RESOLUTION TO CONGRESS ASKING AN APPROPRIATION FOR THE ERECTION OF A PENITENTIARY IN WYOMING TERRITORY.

To the Senate and House of Representatives of the United States, in Congress assembled :

Memorial.

Your memorialists, the legislative assembly of the territory of Wyoming, would respectfully represent; that there is no suitable building within this territory, wherein to detain persons under charge of serious crimes, or confine those under the sentence of the courts; that in consequence, the administration of justice is much retarded, and persons disposed to commit crimes do not feel that restraint that would ensue from a knowledge that the officers of the law were possessed of the means of their detention. That when persons are sentenced by the court to penitentiary imprisonment, said persons have to be transported to Detroit, in the state of Michigan, at great expense to this territory, as well as to the United States; that Laramie city, on the Laramie plains, a large and fertile area of tillable land, well watered and of healthful climate, is well adapted for the location of a penitentiary within this territory; that said Laramie is situated on the Union Pacific railroad, and is convenient to the territories of Utah, Idaho and Montana, should those territories need to transport prisoners for safe keeping or punishment; and your memorialists would pray that a sum not less than sixty thousand dollars be appropriated and set aside for the erection of a penitentiary at said

Penitentiary.

Laramie city. Your memorialists, referring to the act of congress setting aside certain internal revenue for internal improvements in the territories, would further state that, during a large portion of the year eighteen hundred and sixty-seven, the whole of eighteen hundred and sixty-eight, and the greater portion of the year eighteen hundred and sixty-nine, the internal revenue of the territory of Wyoming went to the credit of the territory of Dakota, and that said revenue was largely in excess of that collected from what is now the territory of Dakota, and your memorialists would respectfully request that in the apportionment of the internal revenue for improvements as aforesaid, that the territory of Wyoming be allowed the full benefit of all she has contributed to the national treasury. That your honorable bodies will assist her in so doing by the erection of a penitentiary as aforesaid, thus relieving her of heavy expense. And your memorialists will ever pray.

Location.

Apportionment

Be it resolved, That the secretary of the territory be requested to forward this memorial to the Hon. S. F. Nuckolls, our delegate in congress, and that he be instructed to present the same to congress and use his best endeavors to procure the appropriation prayed for.

Resolution.

Approved December 8, 1869.

CHAPTER 96.

MEMORIAL.

To the Honorable the Senate and House of Representatives of the United States :

We, your memorialists, the legislative assembly of the territory of Wyoming, respectfully call the attention of your honorable bodies to the fact, that the internal revenue department of the United States is collecting revenue duties from persons in this territory, who are living daily exposed, as to their persons and property, to the attacks of hostile indians, and who have no other protection than their own vigilance and bravery; that the internal revenue officers are themselves

Memorial.

Hostile Indians.

Protection.

afraid to collect such revenue in person by reason of the danger from said indians; and your memorialists, believing that if your honorable bodies were cognizant of these facts, that you would agree with us, that the government of the United States does not wish to tax any of its citizens for its support, without affording, adequate protection to their lives and property in return, therefore pray: That all internal revenue collections made in this territory, and not already appropriated for other territorial objects, be ordered to be paid to the governor of this territory, to be by him used in payment of volunteer troops who may be called into the field to serve against hostile indians: And for this your memorialists as in duty bound will ever pray.

CHAPTER 97.

MEMORIAL.

To the Honorable W. W. Belknap, Secretary of War:

Memorial relating to crime.

Your memorialists, the legislature of the territory of Wyoming, respectfully represent the following facts as bearing upon the question of crime in the northwestern and western portions of the territory.

First, A section of country some miles in extent, commencing some one hundred and ten miles north-easterly from Bryan station, upon the Union Pacific railroad, is a newly discovered mining camp, known by the general name of "Sweetwater," one portion of which, called "Miner's Delight," discovered and possessed in 1867, lies within and directly along the southern portion of the Shoshone reservation, set apart by treaty made with this tribe by General Sherman and his colleagues, ratified February 15th, 1869.

Second, In and around this region have congregated many of the outlaws of our common country, and crime, such as murder, robbery and larceny, is of constant occurrence, committed in said mines, both in and out of said reservation, criminals are arrested by the sheriff and

marshal, and large numbers, as many as twenty at a time, are held for trial in said county.

Third, Neither the government, or the county, have a prison or place of any kind, in which to confine criminals. The commandants of Fort Bridger, and the summer camp in the Papo-Agie valley, in said Shoshone reservation, have received, during the past three months, six persons, severally charged with murder and robbery, and held them to aid the law officers of the government, but these military officers refuse to make general jails and prisons of guard houses outside of military offenses, special cases only receiving attention. No prison.

Fourth, About the twenty-fifth day of May last, this Territory of Wyoming was organized by the qualification of the judicial officers under the organic act, and hence, the counties have no efficient organization, having had no legislation in that behalf. Organisation.

Fifth, The country has no fund or legal means of creating one until this legislature shall provide ways and means for this as well as other counties, and for at least eight months yet, it will be impossible to levy or collect sufficient moneys with which to pay the expense attending the punishment of criminals in this portion of the territory. Owing to the storms that prevail from January to May, business is partially suspended, business men are absent, and the collection of a tax is simply impossible. No funds.

Sixth, The officers of the law are compelled to find buildings as best they can, for those charged with crime, and guard such buildings night and day, with double guards, and subsist such prisoners, whether they have offended against the federal or territorial laws; said Shoshone reservation is within said Carter county. The expense to this county of holding prisoners is so heavy that it will be a severe burthen upon the people of this portion of the territory, unless relief be granted; not only this, but escapes cannot be avoided, and he who has robbed, again goes forth, more determined than before, to repeat and ply his nefarious calling. Therefore, be it Escapes.

Resolution.

Resolved, by the Council, the House concurring, That the honorable secretary of war be, and he hereby is earnestly, but respectfully requested to aid the people of this county and portion of Wyoming territory, by ordering the commandant of this department to provide forthwith a place or places, either at Fort Steele or Bridger in which the prisoners held for trial in the western or northwestern portion of this territory may be received, imprisoned and subsisted at the expense and charge of the war department until ways and means can be provided by legislation, and we ask that immediate action may be had in order to relieve the officers of the law and an over taxed people, and thereby aid the courts in punishing crime.

CHAPTER 98.

MEMORIAL.

To the Honorable W. W. Belknap, Secretary of War :

Memorial.

Your memorialists, the legislative assembly of the territory of Wyoming, would most respectfully but earnestly request that the headquarters of this military district be removed from its present location at Omaha to some suitable point in this territory. Your memorialists would respectfully represent, that in their opinion there is no necessity for any military establishment at the city of Omaha, nor that any troops should be stationed there for the protection of its inhabitants or the inhabitants of the adjacent cities. On behalf of the people of Wyoming we would ask that there be troops sent immediately for the protection of our defenseless settlements. Further, your memorialists are fully of the opinion that the nearer the headquarters of this military district are to the field of active operations against the hostile Indians, so much the more effective will such movements be. And in thus expressing their views, your memorialists have only stated what will result, if acted upon, in a great saving to the government, and at the same time render all future military operations in this territory

Change of head
quarters.

complete and effective. The repeated outrages perpetrated by the Indians upon our citizens within the last few weeks, in the Wind river valley, upon the Laramie plains, and in the vicinity of Fort Fred Steele, by which fourteen men have been murdered; call in unmistakable language for protection from the general government against the murderous attacks of the savages.

*Be it Resolved by the Legislative Assembly of the Territory of Wyoming:—*That our delegate in congress be, and is hereby requested to use all proper means to bring this question of vital importance to the favorable consideration the war department. Resolution.

And be it further Resolved, That a copy hereof be forwarded to each the Honorables, the secretary of war, the commanding generals of this military department and district, and to our delegate in congress.

CHAPTER 99.

MEMORIAL AND JOINT RESOLUTION OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF WYOMING, WITH REFERENCE TO INDIANS.

To the Honorable, the Senate and House of Representatives of the United States in Congress assembled :

Your memorialists, the legislative assembly of the territory of Wyoming, would most respectfully but earnestly represent, that treaties of peace and amity have been made from time to time by the United States with the various tribes or bands of the Sioux nation of Indians, among which treaties your memorialists would particularly call your attention to the one concluded at Fort Laramie, in our territory, on the 29th day of April, 1868, by Lieutenant General William T. Sherman, Major General William S. Harney, Major General Alfred H. Terry, General C. C. Augur, J. B. Henderson, Nathaniel G. Taylor, John B. Sanborn, and Samuel F. Tappan, commissioners on the part of the United States, and "Red Cloud," "Medicine Eagle," "Black Tiger," "Black Hawk," "Red

Treaties of peace.
Commissioners

Thunder," "White Bull," "Iron Horn," "Iron Shell," "Thunder Man," "Man Afraid of his Horses," and one hundred and sixty other chiefs, head men and braves of the confederated bands of the Sioux nation, known as Ogal-lallahs, Brules, Minneconjous, Yancetonais, Uncpapas, Black Feet, Cut-heads, *et al.*, in which said treaty the following articles, among others was agreed to, viz :

ARTICLE 1. From this day forward all war between the parties to this agreement shall forever cease. The government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and *they now* pledge their honor to maintain it. It is further provided in said treaty that all white men offending against the Indians shall be punished, and that all Indians who shall commit any depredations upon the person or property of our citizens shall be delivered over to the United States authorities and punished according to law, and that said Indians shall reimburse the injured person for the loss sustained.

Said treaty further provides a reservation for said Indians on the Missouri river, and in many other ways makes provision for the maintenance, comfort and convenience of said Indians; yet, notwithstanding the solemn compact so entered into by said Indians with the United States government, and its generous provisions for their welfare, a large proportion of said Indians, under the lead and advice of "Red Cloud," "Man Afraid of his Horses" and other chiefs, to your memorialists unknown, have repeatedly, openly and maliciously violated their said treaty obligations, and murdered our unoffending, and in many instances, unarmed citizens, by lying in wait for them or dashing upon them with overwhelming numbers, when an opportunity offered the Indians prospects of certain success, and this, too, within the public domain of the United States, ceded to the general government by Arrapahoe and Cheyenne tribes of Indians, and within the counties of Laramie, Albany, Carbon and Sweetwater, in our territory.

Your memorialists would further represent that no white

men have sought these Indians to molest them upon their reservations or privileged hunting grounds, but on the contrary, have confined themselves to that country south of the North Platte river, and west of the Big Horn mountains, on the Wind and Sweetwater rivers. No molestation.

Your memorialists would further represent, that these Indians of whom we complain, are the identical Indians who have been making war on the white emigrants on the great overland and Powder river wagon roads since the year 1864. Warlike Indians. They are the same Indians who, in 1865, captured on the Laramie plains, a government wagon loaded with supplies intended for a detachment of United States troops, then stationed at Cooper's creek mail station for purposes of defense, and after tying the driver of the team securely to the hind wheel of the wagon, piled sacks of bacon around him, set it on fire, and danced around the suffering man until life was extinct.

The same Indians, in the same year, attacked on the Laramie plains, a small outfit consisting of one man, his wife, her mother and two children, who were moving to some of our western territories, wounded the man, who escaped to the mail station, killed the mother without mercy, and captured the wife, who has not been heard from since. Enumeration of outrages. These are the Indians who, in 1866, killed and scalped Lieutenant Daniels at "Crazy Woman's" creek, between Forts Reno and Phil Kearney, and a few days before, at some point north, killed Thomas Dillon, of St. Joseph, Missouri, who was *en route* to Virginia city, Montana territory, with a large train of merchandise. These are the Indians who massacred the gallant Brown and Fetterman and ninety-one of their comrades under the very guns of fort Phil Kearney, in the winter of 1866—7, and after horribly mutilating their bodies in a manner too shocking to be related or printed, stripped them of every garment and left them on the frozen ground, to be hauled into the fort, as they afterwards were the same day, in a perfect state of nudity, ninety-three brave, patriotic, intelligent American citizens, who, at one fell swoop, were sacrificed to the defensive policy of the federal

government, and whose bones fill one common grave near by where once stood the proud fort they so gallantly fought to defend, but where now nothing is to be found but a barren spot of earth, surrounded by mountains and inhabited by the wolf and cougar and the Indian. •

Bearers of dispatches killed.

These Indians subsequently murdered Vanvosah, the brave generous and chivalrous guide, with his two companions while in the discharge of their duties as bearers of dispatches between forts Fetterman and Reno, and left their remains a prey to wolves upon the prairie. These are the Indians who, in 1866, attacked an emigrant train at Brown's Springs, forty miles north of Fort Fetterman, while said train was *en route* to Montana territory, and killed nine men of said train before reinforcements could be procured to drive them away. These are the savages who demanded of our government in 1867-8, that Forts Reno, Phil Kearney and C. F. Smith should be dismantled and evacuated, and the Powder river route to Montana abandoned, and to the great detriment of the early development of our mountain territories, obtained their demand by the terms of the treaty aforesaid. These are the same murderously inclined savages who, notwithstanding their treaty obligations before referred to, made war upon the employes of the Union Pacific railroad company in our territory in the year 1868, and killed the division engineers, Hill and Clark, the first near Cheyenne, and the second near Laramie city, and many other persons of less note, too numerous to mention. These Indians burned the "Horse Shoe" mail and telegraph station in 1868, between Forts Laramie and Fetterman, killing Harper and wounding several other persons. These are the Indians who took the telegraph operator at the Sweetwater telegraph station in 1867, and who tied him down and killed him by driving a wooden spike into his mouth, down his throat, and into his stomach, in which condition he was found two days afterward by Lieutenant Dougan, of the second United States cavalry, while his two companions were allowed to escape from the station, fleeing in the direction of Fort Casper, and who both perished with cold the following night, and were picked up

Burning telegraph stations.

by the road side by the cavalry who went to the relief of the station. Your memorialists would further represent that, according to statistics in the office of the executive of our territory, as shown by the message of his excellency, J. A. Campbell, governor, &c., to our present session of the legislature, it appears that numerous outrages have been perpetrated upon our unoffending citizens by these treaty-breaking Sioux, and we would respectfully, for further information, call your attention to the following extracts from governor Campbell's message, viz: "On the tenth day of May, 1869, the Sioux made an incursion into the Wind river valley, where they murdered four white men, stole a number of horses and mules, and escaped with their booty." "On the third day of July the Sioux made another raid into the valley, carrying off some stock, and again on the fourteenth day of September, they came into the valley and murdered four white persons, but were driven off with considerable loss by the troops. On the twenty-eighth of the same month they made a raid on the mining settlements and murdered the miners near Atlantic city, and escaping unmolested."

Again—Governor Campbell officially communicated to the government under date of the 15th of November, 1869, the particulars of another Sioux outrage in the following words, viz: A hunting party, consisting of three men, belonging to Company "K," of the Second United States cavalry, named McKenna, McAllister and Wentworth, were attacked about fifteen miles from fort Fetterman by a party of about sixty Sioux of "Red Cloud's" band, and McKenna and McAllister were instantly killed. Wentworth, who was an old hunter, and accustomed to deal with Indians, escaped and came to the fort the next morning. Upon Wentworth's report of the facts, captain Wells, the commanding officer at fort Fetterman, instantly dispatched captain Eigan with his company "K," 2nd cavalry, in pursuit of the Indians, but they were unable to overtake them, and only within the last month, and since the convening of this legislative assembly, we have sad news of the murder of an honest and unof-

Outrages mentioned in Governor's message.

fending citizen of Laramie county, by these outlaws, in the person of Richard Dickenson, who was killed and scalped between Cheyenne and Fort Laramie on the _____ day of November, and his remains left beside the road a prey for wolves, and on the second day of December, 1869, we are informed that a detachment of company "E," fourth infantry, consisting of eleven men in charge of sergeant Conrad Bahr, while escorting the mail from Fort Fetterman to Fort Laramie, were attacked by about one hundred Indians, who drove the mail party back to Horse Shoe mail station, mortally wounding private Johnson of said company, who has since died. The same day the Indians attacked another mail party *en route* from Fort Laramie to Fort Fetterman, and drove them back into Fort Laramie, mortally wounding one of that party and slightly wounding a second, and so terrible has this Indian scourge become of late, that every settler, and all men, having stock are fleeing from the northern portion of our settlements in the vicinity of Forts Laramie and Fetterman, and seeking that safety in the vicinity of the railroad, and the more dense settlements, which cannot be afforded them in the valley of the North Platte and its southern tributaries.

Vigorous measures.

Your memorialists regret the necessity that exists for prompt, vigorous and offensive measures against these hostile bands of Indians who inhabit the country north of the North Platte and south of the Yellowstone Rivers, as well as the necessity which requires that such details as are herein set forth should be included in the memorial, in order that it may not be considered an exaggeration of facts gotten up for private speculation or political purposes.

Your memorialists would further represent, that were it not for the great insecurity of life and property in the country north of the U. P. R. R. and south of the North Platte River, that the said country would rapidly fill up with an industrious, thriving people and population, and become a source of wealth to the general government.

True policy.

Your memorialists, believing it to be the true policy of the general government to foster and protect as far as possi-

ble the pioneer, and thereby enable him to make for himself and his posterity a home and an inheritance in a land hitherto unfruitful, do most earnestly protest against the defensive policy heretofore manifested by the general government towards the perpetrator of the outrages herein enumerated, and hundreds of similar ones which it is impossible to include in a memorial, would respectfully suggest that a hostile and offensive policy towards these hostile Sioux would be most effectual in producing a lasting and permanent peace—a peace in reality and not one in name only. Give us a Custer, a Carr or a Sheridan, with a strong cavalry arm of the service. Let retribution dire fall where justice points out the victim; teach these murderous savages that they cannot forever, and with impunity, rob and murder without meriting and receiving the reward of their perfidy and criminal outrage. Let not the cry for help and protection of [some] innocent men, women and children, (whose only crime consist in their attempt to live on the public domain within one or two hundred miles of these indian villages), be made in vain, but rather let the government re-invest itself with Forts Reno, Phil Kearney and C. F. Smith, and the country east of the Big Horn mountains, drained by the waters of the Cheyenne, Powder and Tongue rivers and their tributaries, and a military expedition, under some *fighting* general, sent against these fiends in human shape who have been robbing the general government and its people, and murdering both soldiers and citizens whenever the opportunity offered them a fair prospect of success.

Retribution.

Reinvestment of
forts.

Your memorialists would, therefore, for the reasons given, pray that these Indians be removed on to their reservations on the Missouri river, and compelled there to remain, and that the Powder river route to Montana be opened up to travel, and the country between the North Platte and the Yellowstone river, east of the mountains, to settlement, and in order to ensure a perpetual peace with Sioux Indians, that they be made to feel the strong arm of the government, their war power broken, and these tribes rendered powerless to do

Powder river
route.

the pioneer further harm, and as in duty bound, your memorialists will ever pray, &c.

Resolution.

Resolved, That the Honorable E. M. Lee, secretary of Wyoming territory, be, and he is hereby instructed to furnish Honorable S. F. Nuckolls, our delegate in congress, with certified copies of this memorial and resolution for each branch of congress, and one for his excellency U. S. Grant, president of the United States, and he is hereby instructed to lay the same before the president, vice president and speaker of the house of representatives, and general Phil Sheridan, and to use all honorable means to obtain a redress of the grievances herein complained of, and the re-establishment of our abandoned forts on the Powder river route to Montana territory.

AUTHENTICATION.

WYOMING TERRITORY, }
Secretary's Office, Cheyenne. }

I, E. M. Lee, Secretary of Wyoming Territory, do hereby certify that I have delivered to S. Allan Bristol, Public Printer, true and correct copies of all Laws, Joint Resolutions and memorials, now on file in my office and passed at the first session of the Legislative Assembly of the Territory of Wyoming, begun and held at Cheyenne, the Capital of said Territory, on the 12th day of December, in the year of our Lord one thousand eight hundred and sixty-nine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the great seal of the Territory of Wyoming.

{ L. S. }

Done at Cheyenne, this 10th day of May, in the year of our Lord, one thousand eight hundred and seventy.

EDWARD M. LEE,
Secretary of Wyoming Territory.

AUTHENTICATION.

WYOMING TRIBUNE OFFICE, }
WYOMING TERRITORY, }
May 10th, 1870. }

I HEREBY certify that the general laws, memorials and joint resolutions herein contained, are true and correct copies of those delivered to me by the secretary, as stated in the preceding authentication.

S. ALLAN BRISTOL,
Public Printer.

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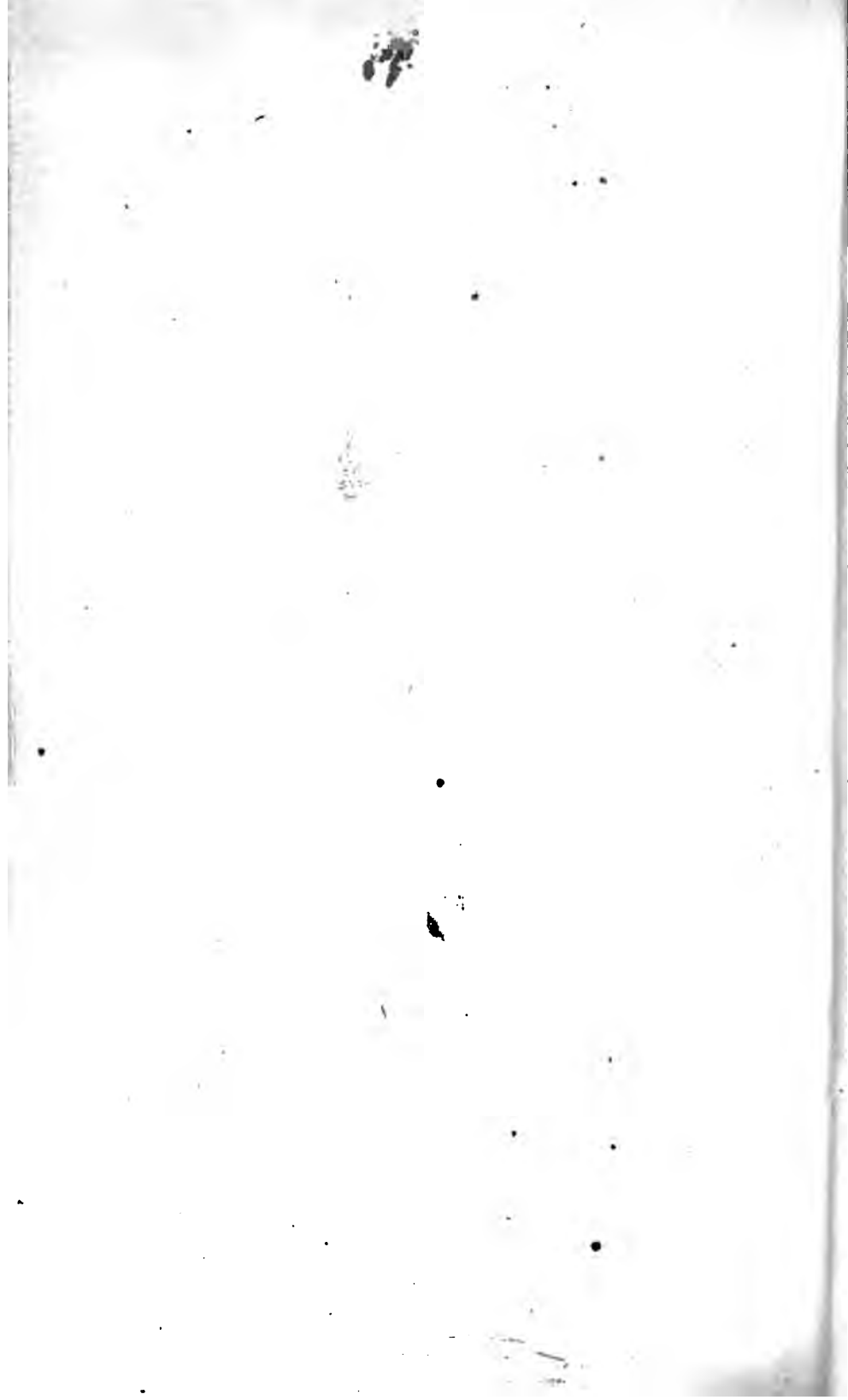
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